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IN THE

SUPREME COURT,

COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

AGAINST

THE ERIE RAILWAY COMPANY AND OTHERS,
Defendants.

REPORT

OF

JAMES C. SPENCER,

REFEREE,

Of the Testimony and Proofs, taken by him, for the purpose of ascertaining what Property or Assets, if any, Hugh J. Jewett, as Receiver in this action, acquired, held or disposed of, not covered by or subject to the lien of the mortgage of the Erie Railway Company to the Farmers' Loan and Trust Company, which has been foreclosed, and if any such property has been disposed of by the said Receiver, what disposition has been made thereof; and also, what rights and equities, if any, the said Farmers' Loan and Trust Company, the purchasers at the said foreclosure sale of the mortgaged premises, or their assigns, had or have in or to such property, or assets, or any part or portion thereof; also, the Report of said Referee of the material facts established by said Testimony and Proofs, with his opinion thereon; under the order of this Court entered in the above-entitled action May 20, 1878.

DATED AT NEW YORK, OCTOBER 31, 1879.

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SUPREME COURT,

NEW YORK COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,
against
THE ERIE RAILWAY COMPANY, and others,
Defendants.

To the Honorable Supreme Court:

JAMES C. SPENCER, Referee in the above-entitled action, respectfully reports as follows:

Whereas, upon the amended summons and an amended complaint, duly filed in the above entitled action, on or about the 26th day of May, 1875, a copy of which appears in the Appendix attached to this report (being No. 22 of "Exhibit L.," and on the 187th page thereof), an order was entered in said action on the said 26th day of May, 1875, whereby Hon. Hugh J. Jewett was duly appointed Receiver of all and singular the property and franchises of "The Erie Railway Company," one of the defendants in said action, being the same property and franchises described in the said amended complaint, and all and singular the appurtenances in any wise thereunto appertaining, with power and authority in the premises, fully set forth in said order, a copy of which appears in said Appendix, marked

as "Exhibit A," on the second page thereof, and to which reference is hereby made.

And whereas, The Farmers' Loan and Trust Company, one of the defendants in said action, appeared and filed an answer therein on or about the 9th day of June, 1875, a copy of which appears in said Appendix (being No. 23 of "Exhibit L," on the 196th page thereof), and upon said last-named day an order was entered in said action, whereby said Receivership was extended to certain mortgages executed by the said "The Erie Railway Company" to the said defendant "The Farmers' Loan and Trust Company," as trustee, and which are fully described in the said answer of the said "The Farmers' Loan and Trust Company"; and said Hugh J. Jewett was thereby duly appointed Receiver under said mortgages, in the same manner and with the same effect, and to all intents and purposes, as though he had been appointed such Receiver, in the first instance, in an independent action brought by the said "The Farmers' Loan and Trust Company," as trustee, to foreclose said mortgages, a copy of which last-mentioned order appears in the said Appendix, and marked as "Exhibit B," on the 4th page thereof, to which reference is hereby made.

And whereas, Dorman B. Eaton, another of the defendants in said action, appeared and filed an answer therein, on or about the 15th day of June, 1875, a copy of which appears in said Appendix (being No. 24 of "Exhibit L," on the 199th page thereof), and upon said last named day an order was entered in said action, whereby the said Receivership was extended to and over the mortgages, mortgaged property, rights, income and franchises set forth and described in the said answer of said defendant Dorman B. Eaton, and the said Hugh J. Jewett was appointed Receiver, under the said mortgages, and for the property, rights and franchises described therein, with such power and authority as is set forth in said last named order, a copy of which appears in said Appendix, marked as "Exhibit C," and on the 5th page thereof, to which reference is hereby made.

And whereas, on the application of the said defendant "The Farmers'

Loan and Trust Company" made in this action, leave was granted to said last named company to institute and prosecute an independent action for a foreclosure of the mortgages described in its said answer, and on or about the 15th day of June, 1875, the said last named company filed its complaint in an action for that purpose in this Court (a copy of which appears in said Appendix being No. 25 of "Exhibit L," and on the 203d page thereof), and upon said last named day an order was entered in said action so commenced by "The Farmers' Loan and Trust Company," by the terms of which, among other things, the said Hugh J. Jewett was appointed Receiver in that action, with such power and authority as is set forth in said last mentioned order, a copy of which appears in said Appendix (being No. 2 of "Exhibit L," and on the 65th page thereof), and to which reference is hereby made; and by the terms of Section 6 of said last mentioned order, the undersigned was appointed as a Referee, to examine, adjust, allow, and pass the accounts, vouchers, acts and doings of said Receiver, from time to time, as therein specifically set forth and described.

And whereas, on or about the 15th day of June, 1875, J. C. Bancroft Davis, one of the defendants in this action, commenced an action as trustee against The Erie Railway Company, and others, to forclose the mortgages described in the answer of the said defendant Dorman B. Eaton as the 5th and supplemental mortgages, and on the said 15th day of June, 1875, on the verified complaint filed in said last-mentioned action, a copy of which appears in said Appendix (being No. 29 of "Exhibit L," and on the 216th page thereof), an order was entered in said last-mentioned action, in all respects similar (except in the names of the parties to said action, and the description of the property to which the said Receivership was extended) to the order heretofore described as entered on the same day in the said action, commenced by "The Farmers' Loan and Trust Company," and in like manner, and with like powers, the said Hugh J. Jewett was thereby appointed Receiver, and the undersigned was appointed as Referee in said action so commenced by the said J. C.

Bancroft Davis (a copy of said order appears in said Appendix, being No. 30 of "Exhibit L," on page 224 of same).

And whereas, the said Hugh J. Jewett duly entered upon his duties as such Receiver in the said three actions, and the undersigned entered upon his duties as such Referee under the said respective orders, entered on the said 15th day of June, 1875, and continued therein to and until the 31st day of December, 1875, when an order was entered, entitled in this action, and also in the said action brought by The Farmers' Loan and Trust Company, and also in said action brought by J. C. Bancroft Davis, whereby I, the undersigned, was appointed a Referee to examine into the facts affecting, and to report to this Court the form of a suitable order to be entered concerning the accounts and doings of Hugh J. Jewett, as Receiver in this action, so far as I had not already examined and reported on the same in my examinations in the said foreclosure suits, and the said order further provided that such order to be by me reported to this Court, "*be in such form as to cover the question of the final accounting and discharge of the Receiver, and the release of his bondsmen, in the first above-entitled suit* (meaning this action), *it being understood that the same is about to be discontinued*," a copy of which last-described order appears in said Appendix (being No. 32 of "Exhibit L," and on page 227 of the same), and to which reference is hereby made.

And whereas, the undersigned entered upon his duties as Referee under the said last mentioned order, and continued the same from time to time, in connection with the performance of his duties as Referee, in the accountings of the said Receiver under the said respective orders of June 15, 1875, heretofore mentioned, to and until the 14th day of November, 1877, when a report was made by me to this Court under the said order, that was entered in said three actions on the 31st day of December, 1875, under the following circumstances: In the proceedings before me under the last mentioned order, all the parties to said actions had appeared except the plaintiff in this action, and said report was made by me, in

accordance with the request of the attorneys and counsel for the parties who had appeared before me in said proceedings, and because I was informed by them, or some of them, that the Attorney-General for the plaintiff had consented or stipulated in writing, at or about the time the said last mentioned order was entered, for the discontinuance of this action, and I was further informed that the formal order for the discontinuance of this action and the discharge of the Receiver therein would be entered upon the filing and approval of my report under said last mentioned order, and I was requested to prepare the form of said order so that it would appear therefrom that the same was moved for entry by the said Attorney-General for the plaintiff. And thereupon I made said report, and the form of the order reported by me therein covered the final accounting and discharge of said Receiver and the release of his bondsmen and the discontinuance of this action, and the same purported to be moved for entry by the said Attorney-General, and the said report and form of order was delivered to the said Attorney-General for the plaintiff, for his action in the premises.

And whereas, afterwards and on the 24th day of December, 1877, the said Attorney-General addressed the following letter to me in regard to said report and his proposed action in regard to the same:

STATE OF NEW YORK.
OFFICE OF THE ATTORNEY-GENERAL,
ALBANY, December 24, 1877.

Hon. Jas. C. Spencer.

DEAR SIR—I am requested by the attorneys for The Erie Railway Company, and for H. J. Jewett, Receiver, to discontinue the action of People *v.* Erie Railway Co. and others. I am also requested by counsel representing stock and bond-holders of said company not to discontinue said action without examination on behalf of plaintiffs into the accounts of said Receiver. I have now your proposed report in this matter, and find therefrom that the plaintiffs do not appear to have had any notice of the proceedings before you as Referee, or to have been represented upon any hearing. I therefore deem it my duty to make what examination I can into the proceedings of the Receiver before giving my consent to the discontinuance of this action and his discharge. I have therefore requested Messrs. Barlow & Olney to represent me in this matter, and to arrange with the various parties for an examination before yourself into this matter I therefore request that you will give a hearing hereon on 26th inst. at 11 A.M., if possible.

Very respectfully,
Your obedient servant,
CHARLES S. FAIRCHILD,
Attorney-General.

And whereas, in accordance with the request in said letter of the said Attorney-General, I notified the attorneys and counsel of the several parties to said three actions to appear before me on the said 26th day of December, 1877, and upon that day the parties did so appear, and the hearing was adjourned by consent until the 27th day of December, 1877, when all the parties to said three actions appeared before me, the Attorney-General for the plaintiff appearing by Messrs. Barlow & Olney as counsel, and the following proceedings were had in said reference:

Messrs. Barlow & Olney, as the counsel for the said Attorney-General for the plaintiff, delivered to me the said report I had made under said order entered in this Court in said three actions December 31, 1875, and moved that the reference under said last-named order be opened, and that I, as Referee, should then proceed to examine into the accounts, vouchers and doings of the said Hugh J. Jewett, as Receiver in this action, under and in pursuance of said order, and in accordance with the request of said Attorney-General in said letter, and in the same manner and to the same effect as if I had not heretofore examined and reported upon the same; alleging that in regard to the said former proceedings and hearings on the reference and accountings under said order, which had resulted in the report made by me and delivered to him, that the plaintiff had not received notice thereof and had not been represented in any manner therein, and that the Attorney-General was not willing to consent to the discontinuance of the action and the discharge of said Receiver without an examination on behalf of plaintiff into the accounts and proceedings of said Receiver.

The attorneys and counsel for the "Farmers' Loan and Trust Company," Trustee, and J. C. Bancroft Davis, Trustee and defendants in this action, and plaintiffs respectively in the other actions, opposed the opening of said reference, and objected to any further proceedings therein, except the transmission to, and the filing of said report in this Court.

As it clearly appeared to me that the plaintiff in this action had not notice of the former proceedings in said reference and had not been re-

presented therein, I decided, as Referee, to consider those proceedings invalid, so far as the interest and rights of the plaintiff were affected thereby, and that the reference under said order entered in said actions on the 31st day of December, 1875, should be opened, and that said report so made by me under said order, and returned to me by the said Attorney-General, should be considered as vacated or cancelled, and that plaintiff should have an opportunity of being heard in regard to the accounts, vouchers, acts and doings of Hugh J. Jewett, Receiver in this action, and in the examination of the same under said order, before any report should be made by me in the premises. Thereupon the reference under said last-mentioned order was then and afterwards continued before me as if no report had been made therein, until on or about the 20th day of May, 1878, when another order of reference was entered in this action on the petition of the said Attorney-General, a copy of which order and petition appears in said Appendix, marked "Exhibit D," commencing on the 5th page thereof, and to which reference is hereby made.

That after the entry of the last-named order (which embraced among its provisions substantially the matters of accounting by said Receiver contained in said order entered in said three actions on the said 31st day of December, 1875), I continued to perform my duties as Referee from time to time in regard to the accountings of the said Receiver under each and every of said respective orders, and at the same times and places; all of the parties to said three actions appearing before me, and participating in the proceedings therein, to and until the 26th day of November, 1878. That in the meantime, and on the 8th day of July, 1878, another order was entered in said three actions, on the petition of said Receiver, in regard to said accountings of said Receiver (a copy of which last-named order appears in said Appendix, being No. 33 of "Exhibit L," on page 228 thereof), to which reference is hereby made.

That on the said 26th day of November, 1878, all of the parties to said three actions appeared before me and stipulated and agreed as follows:

"1st. That the matters of reference under said order of December 31, 1875, and under the order of May 20, 1878, so far as the same embraced or related to the accounts, vouchers, acts and doings of the said Receiver from the 26th day of May, 1875, to and including the 31st day of May, 1878, and the proofs relating thereto, should now be submitted to me for consideration and report; and the parties to all of said actions having been notified, or having appeared on this general accounting for the period aforesaid, that the report of the Referee shall be held to embrace a full and final accounting by said Receiver in all of said actions, for said period.

"2d. That the Referee should report the sum of five thousand dollars as suitable compensation for all the services of Luke F. Cozans, Esq., who has been employed as counsel in said first above entitled action by and in behalf of the said Attorney-General, in the matter of said accounting under the two last above described orders, and has appeared therein since the first day of April, 1878; and the sum of two hundred dollars for his necessary expenses and disbursements in said action, to the date of this hearing, the same to be paid to Luke F. Cozans, Esq., by the said Receiver.

"3d. That whatever sums shall be paid by the said Receiver for the services or disbursements of counsel or the Referee under the said orders of December 31, 1875, or May 20, 1878, shall be paid by him as Receiver in the above entitled actions, but eventually charged to and deducted from any fund or estate that he may be directed by any future order or decree of this Court to set apart, hold and account for as Receiver in the first of the above entitled actions.

"4th. That the Referee be now requested to report to this Court on the matters herein submitted, at as early a day as practicable, and to adjourn the remaining matters of said reference under the order of May 20, 1875, to be continued at the office of said Receiver, number 187 West Street, on the 11th day of December, 1878, at 11 o'clock A. M."

And in accordance with said stipulation I reported to this Court, in the said three actions, as of the 2d day of December, 1878; which report was duly filed in and approved and confirmed by this Court as of the 16th day of December, 1878; to which report and order of comfirmation reference is hereby made.

And whereas, the accountings of said Receiver, under all of said orders, have been continued before me as separate and distinct matters from the other matters of reference contained in said order entered in this action on the 20th day of May, 1878, and agreeably to the request of all parties, I have reported from time to time upon the accounts, vouchers, acts and doings of the said Hugh J. Jewett, Receiver, in said three actions, and I certify that my reports since the time covered by my said last named report, namely, May 31, 1878, have been made to and filed in and confirmed by this Court, as follows:

For the month of June, 1878. Reported as of the 2d day of December, 1878, and approved and confirmed as of the 16th day of December, 1878.

For the month of July, 1878. Reported as of the 31st day of December, 1878, and approved and confirmed as of the 17th day of January, 1879.

For the month of August, 1878. Reported as of the 25th day of January, 1879, and approved and confirmed as of the 3d day of February, 1879.

For the months of September and October, 1878. Reported as of the 8th day of March, 1879, and approved and confirmed as of the 15th day of March, 1879.

For the months of November and December, 1878. Reported as of the 12th day of April, 1879, and approved and confirmed as of the 21st day of April, 1879.

For the months of January, February and March, 1879. Reported as of the 17th day of June, 1879, and approved and confirmed as of the 23d day of June, 1879.

For the months of April, May and June, 1879. Reported as of the 1st day of September, 1879, and approved and confirmed as of the 29th day of September, 1879.

To all of which reports and orders of confirmation reference is hereby made.

And I certify that the accounts, vouchers and doings of the said Receiver in said actions for the months of July, August and September, 1879, have been noticed, and are now pending before me for examination and adjustment, and will be reported upon to this Court as soon as practicable after submission of the same.

And whereas the taking of testimony and proofs and other proceedings under said order of reference entered in this action on the 20th day of May, 1878 *(other than the said accountings of said Receiver)*, commenced before me on the 5th day of June, 1878, when all the parties to this action appeared before me at my office in the City of New York.

Before proceeding in the matters of said reference, I subscribed and duly verified an oath as Referee, and thereupon I appointed Henry L. Vilas as clerk, and John Delahunty as stenographer of said reference, each of whom subscribed and duly verified an oath to faithfully perform his official duty, and said official oaths are transmitted to this Court with this my report.

Said proceedings then commenced and were continued before me as such Referee, from time to time, under said order, at my said office and at the offices of the said Receiver, and the Erie Railway Company, (and were conducted at different times and separate and apart from the proceedings in the several accountings of said Receiver heretofore described,) from the said 5th day of June, 1878, to and until the 5th day of April, 1879. That during said time a large number of hearings were held and a large amount of testimony and proof, both oral and written, was taken before me in said reference, which is reported herewith, and during said time, namely, on the 14th day of March, 1879, on the application of the said

Attorney-General for the plaintiff, an order was entered in this action granting leave to the plaintiff to file and serve a supplemental complaint in this action, and also discontinuing said action as to all the parties defendants, except the said "The Erie Railway Company" and "The Farmers' Loan and Trust Company," a copy of which order, as served upon me, appears in said Appendix, marked "Exhibit E" on page 8 of the same, to which reference is hereby made; and during said time and after the entry of the last-named order, and in accordance therewith, the said Attorney-General filed and served a supplemental complaint in this action, and the defendants, "The Farmers' Loan and Trust Company" and "The Erie Railway Company," each respectively filed and served an answer to said supplemental complaint, and the said Attorney-General has filed and served a reply to said answer of said defendant "The Farmers' Loan and Trust Company." And a copy of said supplemental complaint, answers and reply were duly served upon me, and a copy of the same appears in the said Appendix, marked "Exhibit F," commencing on page 9 of the same, to which reference is hereby made. And during said time and on the 21st day of March, 1879, the said action in which the said J. C. Bancroft Davis is the plaintiff, was discontinued, and a copy of the order of discontinuance was duly served upon me, and a copy of said order appears in said Appendix, being No. 31 of "Exhibit L," and on page 226 of the same, to which reference is hereby made.

And whereas, the parties to this action and the said Hugh J. Jewett, as Receiver, appeared before me on the said 5th day of April, 1879, and submitted all the testimony and proofs taken before me under said order, entered in this action on the 20th day of May, 1878 (including testimony and proofs in regard to the accountings of said Receiver which had been theretofore taken and submitted separately and reported upon, as heretofore stated); and after hearing the argument and views of counsel for the several parties to this action in regard to the subject-matters of said reference, the said testimony and proofs, and the material facts established

thereby, and the legal and equitable status of the case before me, the attorneys and counsel for the respective parties submitted the case to me and requested me to report upon the same, by a written stipulation substantially as follows:

"The parties to this action, by their respective counsel and attorneys, appearing before the Referee, James C. Spencer, appointed by the order entered in this action on the 20th day of May, 1878, do hereby submit all the testimony and proofs heretofore taken by and before the said Referee, for the purpose of ascertaining what property or assets, if any, Hugh J. Jewett, the Receiver in this action, acquired, held or disposed of, not covered by or subject to the lien of the mortgage of the Farmers' Loan and Trust Company, which has has been foreclosed, and if any such property has been disposed of by said Receiver, what disposition has been made thereof, and also all the testimony and proof taken by and before said Referee in regard to the rights and equities, if any, that the said Farmers' Loan and Trust Company, the purchasers at the foreclosure sale of the mortgaged premises, or their assigns, had or have in or to such property or assets, or any part or portion thereof; and the said Referee is requested to report upon the same, as directed by the order of reference.

"And it is stipulated and agreed that all the testimony and proof taken by and before said Referee in the foregoing matters of reference shall be considered by said Referee as testimony and proof under the fourth division of said order of reference, namely, in regard to the facts and circumstances stated in the pleadings in this action; and the said parties to this action do now submit all the testimony and proofs of the facts and circumstances stated in the pleadings in this action that have been taken by or before said Referee; and request said Referee to report upon the same as directed by the order of reference."

(Said stipulation is transmitted with the testimony and proofs, and a copy thereof appears in said Appendix, being "Exhibit G" on the 16th page thereof.)

And whereas, after the said submission, and while I was engaged in the examination of the case and in making a summary or analysis of said testimony and proofs so submitted to me, the said defendant, "The Farmers' Loan and Trust Company," requested of me and the said Attorney-General for the said plaintiff that the case of this reference might be opened for the purpose of taking additional testimony and proofs therein, and the parties to said action, by agreement between themselves and notice to me, appeared before me on the 31st day of July, 1879, for the purpose of enabling the said defendant to make a motion for the opening of the case, and the said defendant, "The Farmers' Loan and Trust Company," then and there moved, on the affidavit of Herbert B. Turner,

(transmitted to this Court with the testimony), that this reference be opened for the purpose of taking further testimony and proofs on the part of the said Farmers' Loan and Trust Company.

The Attorney-General for the plaintiff, appearing by Hon. Amasa J. Parker and Luke F. Cozans, formally objected to said motion being granted.

After hearing the counsel of the said parties upon the motion, I granted said motion and ruled that said reference be then and there opened for the purpose of taking such further testimony or proofs on the part of The Farmers' Loan and Trust Company as should be offered, or on the part of the plaintiff, to which decision and ruling the said Attorney-General, by his said counsel, duly excepted.

And thereupon the said reference was then and there opened and the taking of testimony and proofs resumed, and the case was continued before me until the 7th day of August, 1879, when it was again closed and submitted to me for consideration and report, excepting and reserving, however, to the said Attorney-General for the plaintiff the privilege of transmitting and submitting to me thereafter certain documentary testimony which was the subject of a stipulation between the parties, and I certify that the said documentary testimony was afterwards and on the 26th day of August, 1879, delivered and submitted to me, and at the last named date the testimony and proofs and the case of said reference were finally submitted to me for my consideration and report to this Honorable Court.

And after due consideration, I do respectfully report to this Court all the testimony and proofs taken by and before me, and applicable to the several questions and matters of said reference submitted to me as aforesaid. And I transmit with this my report all of the said testimony and proofs to this Honorable Court, enclosed in a separate box or package marked as follows:

"SUPREME COURT, NEW YORK COUNTY.

"THE PEOPLE OF THE STATE OF NEW YORK

against

"THE ERIE RAILWAY COMPANY and others.

"Testimony and Proofs taken by and before James C. Spencer, Referee, under the order of this Court, entered in the above-entitled action May 20th, 1878."

And I do further report, that for the convenience of this Court, in the consideration of said testimony and proofs, I have divided the same into four general classes, namely:

The *First Class* contains the oral testimony of witnesses who were sworn and examined before me on said reference, and whose evidence was taken in the form of depositions, subscribed by said witnesses respectively (excepting, however, the testimony of the witnesses taken after the re-opening of the case on the 31st day of July, 1879, which, by the stipulation and agreement of the parties to this action, is transmitted in the form of a record and minutes thereof, made in the case by my clerk and stenographer), and I certify that said oral testimony is contained in said box or package, and marked as follows:

"CLASS NO. 1.

"Oral testimony of witnesses examined before James C. Spencer, Referee."

And the depositions and testimony of the following named persons are included in this class, namely:

1. Bird W. Spencer, the Cashier of H. J. Jewett, the said Receiver, and also the Treasurer of the New York, Lake Erie and Western Railroad Company.

2. Stephen Little, the Auditor of the said Receiver and The Erie Railway Company, and also the Auditor of the New York, Lake Erie and Western Railroad Company.

3. Thomas F. Jackson, a clerk in the Real Estate office of said Receiver.

4. John M. Finch, Real Estate Agent of said Receiver.

5. Samuel Hines, Superintendent of Coal Companies managed by said Receiver.

6. Charles L. Atterbury, the Attorney of said Receiver.

7. Augustus R. Macdonough, the Secretary of said Receiver, also the Secretary of the New York, Lake Erie & Western Railroad Company.

8. Edson D. Hammond, Assistant Secretary.

9. Hon. Hugh J. Jewett, Receiver of The Erie Railway Company.

10. Octave Chanute, Chief Engineer of The Erie Railway for said Receiver.

11. E. S. Bowen, Superintendent of The Erie Railway for said Receiver.

12. Augustus Stein, General Accountant of said Receiver.

13. Hon. Samuel L. M. Barlow, Director, &c.

14. Homer Ramsdell, Director, &c.

The *Second Class* contains the exhibits, schedules and papers introduced in evidence, and referred to and testified to by said witnesses on their examination respectively, and are transmitted in said box or package and marked as follows:

"CLASS NO. 2.

"Exhibits, schedules and papers introduced in evidence, and referred to and testified of, by the several witnesses examined upon the reference before James C. Spencer, Referee."

And I certify that correct copies of said exhibits, schedules and papers contained in Class No. 2, or references thereto, appear in the said Appendix under "Exhibit H" and "Exhibit N."

The *Third Class* contains all the pleadings in this action (copies of which are contained in said Appendix under "Exhibit F," and Nos. 22, 23, and 24 of "Exhibit L"); also all the oral or written stipulations of the parties made before me at the hearings of said reference, and which form a part of the minutes or record of said hearing, kept by Henry L. Vilas, Clerk, and copies of which also appear in said Appendix under "Exhibit K" and "Exhibit N." Said class is transmitted in said box or package and marked as follows:

"CLASS NO. 3.

"Pleadings in the action, and oral and written stipulations made therein."

The *Fourth Class* contains exhibits, schedules and papers received in evidence at the hearings of said reference, not included in Class No. 2 (copies of the same, or references thereto, are to be found under the several numbers of "Exhibit L" and "Exhibit N," of said Appendix), and the same are transmitted in said box or package and marked:

"CLASS NO. 4.

"Exhibits, schedules and papers that were received in evidence on reference, and not included in Class No. 2."

And upon the submission of the said case by the parties on the 5th day of April, 1879, and afterwards, the Attorney-General for the plaintiffs, by Hon. Amasa J. Parker and Luke F. Cozans, and the Erie Railway Company and the Farmers' Loan and Trust Company, by their respective counsel, each submitted to me, in writing, for my consideration, proposed findings of the material facts that each of said counsel deemed established

by the said testimony and proofs, and requested me to report the same to this Court. I report to this Court said proposed findings, and transmit the same in said box or package entitled in said action and marked:

"Findings of material facts proposed by the parties to this action to the Referee, on the submission of the case of reference."

And from said proposed findings, and the schedules and papers therein referred to, and from a detailed account or statement delivered to me by the counsel for said Attorney-General, and from the testimony and proofs in the case, I have prepared a schedule of the property that said Attorney-General claimed before me had been acquired, held or disposed of by said Hugh J. Jewett, as Receiver in this action, and which was not covered by or subject to the lien of the said mortgage of the Farmers' Loan and Trust Company, nor was the same covered by or subject to any rights and equities of the said Farmers' Loan and Trust Company, or to any rights and equities of the purchasers at said foreclosure sale, or their assigns.

The respective counsel for the Farmers' Loan and Trust Company, and The Erie Railway Company, claiming that all of said property in said schedule was covered by and subject to the lien of the mortgage aforesaid, and also that the Farmers' Loan and Trust Company and the purchasers at said sale, or their assigns, had rights and equities in and to the said property under said mortgage, and the proceedings in the foreclosure thereof, that were superior and paramount in law and equity to the claims, rights or equities of the plaintiff in this action, to the same or any part thereof, which said schedule I transmit with said findings, and a copy thereof appears in said Appendix, being Exhibit M, commencing on the 229th page thereof.

And I do further report to this Court, that I have read and most critically examined and considered all of said testimony and proofs, and each and every portion thereof, and the relation and analogy of the different

portions to each other, and I have analyzed and summarized the same in regard to each and every question and subject-matter of said reference, and the property referred to therein, and each and every parcel thereof; and after such examination and consideration, I do hereby respectfully report to this Court, that I deem the following materials facts established by said testimony and proofs, in regard to the questions contained in the following portion of the first section or subdivision of said order of reference, entered in this action on the 20th day of May, 1878, namely:

"And the said Referee shall take testimony for the purpose of ascertaining what property or assets, if any, the said Hugh J. Jewett, as Receiver in this action, acquired, held, or disposed of, not covered by or subject to the lien of the mortgage of The Erie Railway Company to The Farmers' Loan and Trust Company, which has been foreclosed, and if any such property has been disposed of by said Receiver, what disposition has been made thereof; and also what rights and equities, if any, the said Farmers' Loan and Trust Company, the purchasers at the foreclosure sale of the mortgaged premises, or their assigns, had or have in or to such property or assets, or any part or portion thereof; and that the said Referee report to this Court the testimony so taken by him, and the material facts which he shall deem established by such testimony, with his opinion thereon, for the further action of this Court."

First.—I do find and report that the statement and description of proceedings in this action, and in the said foreclosure action, in which The Farmers' Loan and Trust Company (hereinafter called the Trust Company) is plaintiff, and also in the said action in which J. C. Bancroft Davis was plaintiff, already and heretofore stated in this report, has been correctly stated and set forth, and without formal repetition of the same, and for brevity, I do find and report such previous statement of said proceedings as material facts established by said testimony; and as additional material facts established in regard to the proceedings in said actions, I do find and report as follows:

That on the petition and motion of the Trust Company, and of J. C. Bancroft Davis, plaintiffs respectively in said foreclosure actions, based upon the affidavits of Herbert B. Turner and Henry A. Tailer, an order was entered in said actions on the 6th day of April, 1876, whereby, among other things, it was ordered that the property, stocks and bonds described in the said affidavits, be held and dealt with by the said Receiver as a part of the general fund and estates embraced in the mortgages to the plaintiffs respectively in said foreclosure actions, and embraced in the Receivership thereof, and be held and dealt with, among other things, by said Receiver for the reimbursement to the plaintiffs of all sums paid under the orders of this Court out of the proceeds of the mortgaged property for the discharge of debts due from the Erie Railway Company, at the date of the appointment of said Receiver, for labor, supplies, &c., and the said Receiver was also ordered, in the exercise of his best discretion, to sell and dispose of said last-named property, stocks and bonds, and to use and apply the said securities, or the proceeds thereof, for any and all of the purposes for which he is or may be authorized to use and appropriate the income of the mortgaged premises. A copy of said affidavits and order appears in said Appendix, being No. 5 of Exhibit L, commencing on page 74 thereof, and by reference thereto it appears that the stocks and bonds and other securities which were the subject of said last-named order, are the same as those described in said Exhibit M in said Appendix.

That afterwards, on the petition of the Erie Railway Company in said two foreclosure actions, an order was entered therein on the 12th day of August, 1876, authorizing said Receiver to aid in a proposed plan of reorganization and reconstruction, and said petition and order appear in said Appendix, being No. 6 of Exhibit L, commencing on page 81, to which reference is hereby made.

That on or about the 24th day of September, 1877, in accordance with an order of this Court, entered on the last-named date in said foreclosure

action, brought by said Trust Company, a copy of which appears in said Appendix, being No. 26 of Exhibit L, on the 209th page thereof, the said Trust Company filed and served an amended and supplementary complaint in the said last-named action, by which the prayer for relief was limited to the mortgage therein referred to as the second consolidated mortgage, and by which there were included as parties to the same, certain creditors of said Erie Company, being all of its creditors who had at that time recovered judgment against the said Erie Company (a copy of said amended complaint appears in said Appendix, being No. 27 of Exhibit L, commencing on the 210th page thereof), and the said Erie Company appeared and answered said amended complaint (a copy of which answer appears in said Appendix, being No. 28 of Exhibit L, on the 215th page thereof), and all of the said judgment creditors of said Erie Company who had been made parties defendant to said action appeared therein, and afterwards such proceedings were had in said foreclosure action, that on the 7th day of November, 1877, a judgment and decree of foreclosure of said mortgage described in said amended complaint was duly rendered and entered therein, a copy of which appears in said Appendix, being No. 9 of Exhibit L, commencing on the 93d page thereof, to which reference is hereby made.

That, among other things, the said judgment and decree substantially set forth and described in general terms all the said property described in said schedule (Exhibit M) last above referred to, and in substance and effect ordered, adjudged and decreed in the premises; that the total amount of principal and interest due to the plaintiff at the date of the judgment was the sum of $29,789,290.20; that all and singular the mortgaged premises, franchises and property, including the property described in said schedule (Exhibit M), be sold in one parcel, by and under the direction of one George Ticknor Curtis, Esq. (who was thereby appointed a referee for that purpose), subject to certain liens and encumbrances, charges and payments, among which was the payment of the amount of lawful indebtedness of said Hugh J. Jewett as Receiver existing at the time

of sale, and that said Referee should, after said sale, make a report thereof to this Court, and after his report had been duly confirmed, that he execute a deed or deeds of said property so sold to the purchaser or purchasers at such sale, his or their assigns, and by the said judgment the said Erie Railway Company and the said Receiver was authorized and directed to execute and deliver proper conveyances and assignments of all and singular the property so sold by the said Referee to the said purchaser or purchasers, their representatives or assigns, who should be thereby fully vested with, and should hold, have, possess and enjoy the said franchises, property and premises sold in pursuance of said judgment. That after paying certain fees, costs and expenses, and taxes and assessments, specifically described in said judgment, the said Referee was directed to pay to the plaintiff the remainder of the proceeds of sale to apply on said amount due, or so much thereof as would satisfy and discharge the same.

In pursuance of said judgment and decree, and on the 24th day of April, 1878, all of the said mortgaged premises, franchises, and property, including the said property described in said schedule (Exhibit M), were sold at public auction by said Referee, and the report of said sale was afterwards filed and duly approved and confirmed by this Court, as were also the proceedings of said Referee, and the sale of the property described therein, by the order of this Court (a copy of which report and said order of confirmation appears in said Appendix, being Nos. 10 and 11 of Exhibit L, commencing on the 108th page thereof).

And whereas it substantially appears from said report of sale that said sale included all the property set forth and described in said judgment, and also in said schedule (Exhibit M), and that the same was sold in one parcel to Edwin D. Morgan, J. Lowber Welsh and David A. Wells, as Trustees, for the sum of $6,000,000. That said property was sold subject to certain mortgages, contracts and claims, as encumbrances, among which was included the payment by the said purchasers of the amount of the indebt-

edness of the said Receiver existing at the time of sale, the maximum amount of which the said Referee had announced at the sale as being the sum of two millions of dollars. That after the entry of the said order confirming said sale, and on the 26th day of April, 1878, the said George Ticknor Curtis, as Referee, and the said Erie Railway Company, under the direction of this Court, executed and delivered to the said purchasers, Messrs. Morgan, Welsh and Wells, deeds of sale, conveyance and assignment of all the property sold as aforesaid, and described in said judgment and report of sale.

(That copies of said deeds appear in said Appendix, being Nos. 15 and 16 of said Exhibit L, commencing on page 152 of the same, to which reference is made.)

And afterwards, in pursuance of the statute of this State, in such case made and provided, namely, Chapter 446 of the Laws of 1876, the said purchasers did associate with themselves certain other persons, and with them did take such proceedings that on or about the 27th day of April, 1878, the said purchasers and their associates became a body politic and corporate, under the name of the "New York, Lake Erie and Western Railroad Company," and afterwards, and on the same 27th day of April, 1878, the said purchasers, Messrs. Morgan, Welsh and Wells, did execute, under their hands and seals, and acknowledge and deliver to the said corporation, The New York, Lake Erie and Western Railroad Company a deed of sale, conveyance and assignment of all and singular the said premises and property, so as aforesaid conveyed and assigned to them by the said Referee, George Ticknor Curtis, Esq. (a copy of said deed appears in said Appendix, being No. 17 of said Exhibit L, commencing on page 161 of the same.) That afterwards, and on or about the said 27th day of April, 1878, the said corporation The New York, Lake Erie and Western Railroad Company, claimed of and from said Hugh J. Jewett, Receiver, that under and by virtue of the said judgment of foreclosure, and the sale thereunder, and of the said several deeds of conveyance, and by its undertaking to in-

demnify the said Receiver against all and singular his indebtedness and liabilities as Receiver, which it had done to the satisfaction of said Receiver, that it, the said The New York, Lake Erie and Western Railroad Company, was entitled to have and receive from said Receiver the transfer and delivery and the possession of all the property and franchises embraced in the said judgment, and the said several deeds of conveyance, which embraced and included all the property and franchises of every kind and description then in the posssession of said Hugh J. Jewett, Receiver, in all of the said three actions, the transfer, delivery and possession of which the said corporation, The New York, Lake Erie and Western Railroad Company, claimed and demanded of said Receiver.

That afterwards, and on the petition of the said Receiver, made in said foreclosure action, an order was entered in said foreclosure action on the 3d day of May, 1878, by which, among other things, the said Receiver was ordered to transfer, deliver and surrender to the said New York, Lake Erie and Western Railroad Company, all the property and franchises whereof he was then possessed as Receiver in said foreclosure action, and which were embraced or intended to be embraced in the said judgment of foreclosure, subject to certain reservations and exceptions in said order specified, and subject to all and singular the rights of the People of this State, in and to the premises or any part thereof, as the same might thereafter be ascertained and determined in this action (and a copy of said petition and order appears in said Appendix, being No. 13 of said "Exhibit L," commencing on page 144 thereof).

That afterwards and on or about the 1st day of June, 1878, the said Receiver transferred and delivered to the said The New York, Lake Erie and Western Railroad Company, said property and franchises described in said judgment and included in said sale, in manner and form as he was directed in said last described order.

That after the entry of said last mentioned order, and on or about the 20th day of May, 1878, the plaintiff in this action, on the petition of said

Attorney-General, obtained the order heretofore described as entered on the 20th day of May, 1878 (said order and petition being "Exhibit D" of said Appendix), whereby the undersigned was appointed referee, to take testimony in regard to said property and the rights and interests of the parties to this action therein, being the subject-matter of this reference.

That a copy of said mortgage that was foreclosed in the said action brought by said Trust Company, as heretofore stated, appears in said Appendix, being No. 1 of "Exhibit L," commencing on the 59th page thereof. This mortgage was delivered and went into effect March 15, 1874. (See stipulation of parties, "Exhibit N," page 237 of Appendix.)

That there were many other orders and proceedings in this Court in the said three actions that I have not herein specifically found and described, all of which, however, were submitted to me as a part of the testimony and proofs in this action, and reference may be made to the same by this Court or the counsel of either party, in accordance with the stipulation of the parties, made in open Court before me on the 14th day of June, 1878, and subsequently amended on the 6th day of August, 1879, a copy of which appears in "Exhibit N" of said Appendix, on page 237 thereof.

As a material fact or a conclusion of fact, appearing in the case from all of said proceedings in all of said actions, and affecting in a greater or less degree the rights and interests at law and in equity of the parties to said actions, respectively, and which should be stated in this connection, is the following, namely:

That after the entry of the respective orders in said actions, appointing said Hugh J. Jewett Receiver, and until the 31st day of December, 1875, all important motions and petitions affecting said Receivership and the estate and property of the same, and orders entered thereon, were entitled in each of the said three actions, and there was an appearance of the Attorney-General for the plaintiff therein. That after said order was entered in said three actions of the 31st day of December, 1875, in which it was stated that it was understood by the parties to said action that this

action was about to be discontinued (see Appendix No. 32 of "Exhibit L," page 227), there was no further petition or order entered in this action, nor any appearance of the said Attorney-General of the plaintiffs in either of said actions until December 26th, 1877, *and after the said judgment in the foreclosure action had been entered;* and his appearance then was made, and by him so declared to be, for the purpose of an examination into the accounts and proceedings of the said Receiver, before giving his consent to his discharge in this action and the discontinuance of the same (see letter of Attorney-General, *ante*). That no further or other appearance of said Attorney-General, except for the purpose of the accountings of said Receiver, under said order of December 31st, 1875, was made in said action *until after the sale, transfer and conveyance of the property in question under the judgment of foreclosure to Messrs. Morgan, Welsh and Wells, and by them to the New York, Lake Erie and Western Railroad Company*, and after the said Receiver, by his petition of May 3, 1878, had applied to this Court for its instructions in regard to the delivery of the property in his possession as Receiver to the said New York, Lake Erie and Western Railroad Company, as claimed and demanded by it.

That afterwards, and not until the 20th day of May, 1878, did the said Attorney-General make any statement or claim in this action that said Receiver had acquired any property which was not affected by nor subject to the lien of said mortgage that had been foreclosed, and that the same or any part thereof had been included in said judgment of foreclosure, and in the sale and conveyances under the same, and that he desired an inquiry and examination in regard to the same.

That in the petition of said Attorney-General to this Court in this action, bearing date of the said 20th day of May, 1878, such statement and claim was made for the first time by the said Attorney-General, and said order was entered in this action authorizing said inquiry and examination, which commenced before me on the 5th day of June, 1878, as heretofore stated.

That no statement nor claim was made by the said Attorney-General in the pleadings in this action in regard to the said property included in said judgment of foreclosure and the sale thereunder, until the 2d day of April, 1879, when, in the reply of said Attorney-General to the answer of the said Trust Company, such a statement and claim was alleged and set forth.

That in the meantime and on or about the 5th day of October, 1878, the said The New York, Lake Erie and Western Railroad Company had issued a series of bonds, amounting in the aggregate to over $35,000,000, and had executed and delivered to the Farmers' Loan and Trust Company a mortgage deed of conveyance and assignment of all of its property, real and personal, to secure the payment of said bonds which had been so issued; and all of said property that had been sold and transferred under said judgment of foreclosure and sale, and also the property described in said schedule ("Exhibit M"), or the greater part thereof (said last described mortgage appears in said Appendix, being No. 18 of "Exhibit L," on page 165 of the same).

And I certify that the foregoing are substantially all the material facts that I deem established by the proceedings in said three actions, and the documents and papers connected therewith, and present substantially all the rights and equities of the parties to this action in and to the said property described in said "Exhibit M," based upon said proceedings and documents alone.

Second.—And I do further find that the following material facts are established by said testimony and proofs of and concerning all the lines of railroad that constituted the system of the Erie Railway, and that were known and considered by the Erie Company and its Directors as the railroads or the system of combinations of railroads that at the time of the execution of said mortgage constituted the Erie Railway, and which were granted and conveyed by said mortgage, and included and described in the descriptive clause thereof.

The Erie Railway Company, by their mortgage aforesaid (see Appendix No. 1 of Exhibit L, page 59), did grant, bargain, sell, assign, transfer and convey unto the said Farmers' Loan and Trust Company, the Erie Railway, by the following descriptive words: "all and singular the railway of "the party of the first part, from and including Piermont, on the Hudson "River, to and including the final terminus of the said railway on Lake "Erie, and the railway known as the Newburgh Branch, from Newburgh "to the main line, and also all that part of the railway designated as the "Buffalo Branch of the Erie Railway, extending from Hornellsville to "Attica, in the State of New York, *and also all other railways belonging to* "*the party of the first part, in the States of New York, Pennsylvania, and* "*New Jersey, or any of them*, together with all the lands, tracks, lines, "rails, bridges, ways, buildings, piers, wharves, structures, erections, "fences, walls, fixtures, franchises, privileges and rights of the said com- "pany, and also all the locomotives, engines, tenders, cars, carriages, "tools, machinery, manufactured or unmanufactured materials, coal, wood "and supplies of every kind, belonging or appertaining to the party of "the first part, and all the tolls, incomes, issues and profits arising "out of the said property, and all rights to receive or recover the same; "also all the estate, right, title and interest, terms and remainder of terms, "franchises, privileges and rights of action, of whatsoever name or nature, "in law or in equity, conveyed or assigned unto the New York and Erie "Railroad Company, or unto the Erie Railway Company, by the Union "Railroad Company, by the Buffalo, New York and Erie Railroad Com- "pany, by the Buffalo, Bradford and Pittsburgh Railroad Company, by "the Rochester and Genesee Valley Railroad Company, and by the Long "Dock Company." "To have and to hold the same, together with all "and singular the emoluments, income, advantages, tenements, heredita- "ments and appurtenances thereunto belonging, and the reversion and "reversions, remainder and remainders, rents, issues and profits thereof, "unto the said party of the second part and its successors forever."

The Erie Railway (including its main lines and branches), as the same existed and was known at the time of the delivery and execution of said mortgage, appears from a map transmitted herewith to the Court, marked "Exhibit No. 1, of August 6, 1879," and may be described as follows: The principal offices of said company were in the City of New York, and the time of running of trains was established and regulated from said city. It connected with its wharves, piers and depots at what is known as the Long Dock, Jersey City, by means of steam ferry-boats and barges; from thence its principal main line extended northerly via Paterson, N. J., to Sufferns. (This portion of the main line was held by lease from the Union Railroad Company, executed in 1852, and included the Paterson and Hudson River Railroad and the Paterson and Ramapo Railroad, extending from Jersey City, N. J., to Sufferns, N. Y.)

It also had a branch line running northerly to its oil-docks and stock-yards on the Hudson River. (This branch is composed of the Weehawken Branch Railroad and the New York and Fort Lee Railroad, and was held and operated under lease and contract. It was and is the only means of connection between the depot and depot yards of the main line at Jersey City, and the oil docks and cattle yards in Hoboken.)

It also managed and conducted a line known as the Northern Railroad, running from Jersey City northerly to Nyack, N. Y, under a contract with the Northern Railroad of New Jersey. It also had a branch line extending from Jersey City to Newark, N. J., and thence to Paterson, N. J., connecting at the latter place with the main line. (It held this branch by leases and by the ownership of capital stock and bonds, as hereinafter stated).

At Sufferns it connected with what was known as the main line from Piermont, on the Hudson River; from Sufferns it extended northerly to Turner's Station, where it connected with one of its branch roads to Newburgh; from Turner's it extended to Greycourt, where it connected with another of its branch lines to Newburgh. (These last named two branch

lines were claimed by The Erie Company in absolute ownership, and so held and managed at the time of the execution of said mortgage.)

From Greycourt it extended to Goshen, where it connected with one of its branch lines running northerly to Montgomery, also with another branch line running southerly to Pine Island. (These last named two branches were held and operated under leases.)

From Goshen it extended northerly via Port Jervis, N. Y., to Lackawaxen, Pa.; at the latter place it connected with one of its branches from Honesdale and Hawley, Pa.; from Lackawaxen it extended westerly via Deposit to Susquehanna, Pa.; at the latter place it connected with one of its branch lines from Carbondale, Pa. These two last mentioned branch lines formed what was known as the "Jefferson Branch" or the Jefferson Railroad, the rights and franchises of which were owned by the Jefferson Railroad Company, all of whose capital stock was owned by said Erie Company, and it also had leases of the same.

From Susquehanna it extended westerly via Binghampton, Waverley, Elmira and Corning to Painted Post, N. Y. At the latter place it extended northerly and westerly in two main lines, one extending via Bath to Avon, where it connected with one of its branch lines running north to Rochester, and with another branch line running southerly to Mt. Morris. From Avon this main line extended westerly via Batavia and Attica to Buffalo, Black Rock and Suspension Bridge; the other main line extended from Painted Post via Hornellsville to Attica and Buffalo, and thence to Black Rock and to Suspension Bridge. At Hornellsville another of its main lines extended via Cuba, Carrollton and Salamanca to Dunkirk on Lake Erie; this last main line connecting at Carrollton with one of its branches called the Bradford Branch, that extended southerly from Carrollton to Bradford, Pa. (This last branch is the Buffalo, Bradford and Pittsburgh Railroad, one of its leased lines, and whose capital stock was wholly owned by the Erie Company.)

A portion of said branch lines and connections and companies were

specially mentioned in said mortgage, while others were described under the general words: "Also, all other railways belonging to the party of the first part in the States of New York, Pennsylvania, and New Jersey, or any of them."

The greater portion of these lines was owned by the Erie Company, and in regard to the other portions the Erie Company owned the right of way or of use by contract or lease, or it held and owned the capital stock and the rights and franchises of the companies or corporations that owned the same, as hereinafter fully described.

All these lines formed the Erie Railway, and were parts or adjuncts thereof; and it is impossible to separate or designate any portion of the same that could be excluded with propriety from the general name and designation of "*The Erie Railway.*"

The Erie Company, and its officers, directors and agents, always treated and considered each and every of these branch and main lines as an integral part of one whole system of railroads, under the said name and designation, "The Erie Railway;" although the titles of the different portions thereof were held in different forms, in some cases for convenience, and in others from necessity. In the execution of said mortgage, the Erie Company intended to embrace within its provisions, and to mortgage and convey, all its estate and interest of every kind in this whole system of railroads, heretofore described. And I do find as a material fact established by said testimony and proofs, that the said Erie Company did mortgage and convey all its estate and interest of every kind, in and to this whole system of railroads, including the main and branch lines, herein described.

Third.—It having been claimed by the Attorney-General, as heretofore stated, that certain property set forth and described in said schedule (Exhibit M) was not covered by, nor subject to the lien of said mortgage, and that neither the said Trust Company nor the purchasers at said sale,

nor their assigns, have any rights or equities in said property, I do find and state *generally*, under this head, the following material facts, that I deem to be established by said testimony and proofs concerning the greater portion of said property, its character and the circumstances of the acquirement and holding of the same by the said Erie Company or the said Receiver (referring to said Exhibit M for a detailed description of each class of said property):

1. That all the real estate described in said schedule (Exhibit M), whether acquired by the Erie Company before or after the execution and delivery of said mortgage, or by the said Receiver, and whether held in fee or by lease, was acquired and held for railroad purposes and uses by said Erie Company in accordance with its charter, and was, in point of fact as well as law, subject to and covered by the said mortgage, and substantially included within the description of property therein.

2. And if it shall be held by this Court that the ownership of all the capital stock of railroad and steamboat companies, coal companies, and other companies, that are corporations of the State of New York or Pennsylvania, was substantially, in law and equity, under the circumstances of this case, the ownership of the real estate and other property of said corporations, then I find that all the property, real and personal, of said corporations, whose capital stock was acquired and owned by said Erie Company prior to the execution of said mortgage, was acquired and held for actual railroad uses and purposes by said Erie Company, under and in accordance with its charter, and was, in point of fact as well as law, subject to and covered by the said mortgage, and substantially included within the description of property therein; *but in regard to all the property thus held, I do hereafter specially report upon the same.*

Fourth.—I do further find that the capital stock of the Towanda Coal Company, the Glenwood Coal Company, the Hillside Coal and Iron

Company, the Northwestern Mining and Exchange Company, and the Lackawanna and Susquehanna Coal and Iron Company, was acquired and held by said Erie Company before the execution and delivery of said mortgage, and the question as to whether or not, in law or equity, the properties of said companies are to be considered as real estate or personal property belonging to said Erie Company, ignoring the fact of the existence of said incorporations, rests upon the following facts relating to their acquisition and control, which I deem established by said testimony and proofs, premising the same, however, with this statement:

In the complaint in this action, the plaintiff alleges the purchase or the acquisition of these stocks by the Erie Company to have been *ultra vires*, and in violation of the charter of said Erie Company, and that such purchase constituted a just ground for the forfeiture thereof. The answer of the Erie Company takes issue upon this allegation. From the facts hereinafter stated, it may be determined by this Court, as a question of law, whether such acquisition was *ultra vires* or not, and how far the status of the property is affected thereby.

A.—Prior to the year 1873, the Erie Railway Company had acquired coal lands and capital stock of coal companies with the view of providing fuel for its locomotives.

In 1868 it acquired the whole of the capital stock of the Towanda Coal Company, then owning 1,090 acres of coal lands in fee in Bradford County, Pennsylvania, and a large leasehold property, rented from the Barclay Railway Company and the Barclay Coal Company. This company has, since 1868, been managed by the Erie Company, and large supplies of bituminous coal have been received therefrom at a low price, just sufficient to mine and produce the same. Erie owns all its capital stock and bonds, and all were acquired prior to February 4th, 1874.

The Glenwood Coal Company was another company acquired by the Erie Company through Jay Gould, which furnished Erie Company with

large quantities of coal for fuel at low prices. This stock was transferred by Gould to Erie Company in 1873.

It does not appear that these coal companies ever made any profits, or declared any dividends, nor paid anything on account of the principal or interest of their bonded debt. They were managed by the Erie Company exclusively in its interests, and for the sole purpose of furnishing it fuel for its locomotives and engines at the cost of mining the same.

The property known as the "Erie Colliery, or the Whitmore property," at Carbondale, was also acquired by the Erie Company through Gould, and transferred to Watson as trustee, &c., by Gould in 1873, and subsequently this property was purchased by the Glenwood Company, and became a part of its coal lands. The property of the Glenwood Company, including the Erie Colliery, was afterwards sold under a foreclosure of a mortgage, and bought by the Hillside Coal and Iron Company in 187 , and the Glenwood Coal Company no longer has a corporate existence, having been formally dissolved under the laws of Pennsylvania,
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B.—Prior to and during the year 1873, the Erie Railway Company, by and through its directors (Mr. Watson being then President), inaugurated and developed the policy of acquisition of coal lands and coal interests to a much greater extent. It determined to acquire a large area of anthracite and bituminous coal lands in Pennsylvania for the future use and interest of the Erie Railway Company, and with the avowed object and policy—

1*st.* To secure for its locomotives and engines fuel for all time, upon reasonable terms or prices.

2*d.* To secure and hold for all time its traffic and business in the transportation of coal from the mines in Pennsylvania to market (which was very large), by owning and working coal mines of its own to such an extent as to provide coal for transportation to market, in case by future

combinations its coal traffic from other coal companies should be diverted to other railroads, thus enabling it to be independent and free from loss by such combinations, &c.

C.—Prior to or during the year 1873, the Erie Railway Company developed and carried such policy into execution by the purchase of a large quantity of anthracite and bituminous coal lands in Pennsylvania. The contracts for these lands were made, and the titles were vested, in the name of Peter H. Watson, then President, and acting as the trustee of the Erie Railway Company in the premises. About the same time it acquired by purchase the charters, corporate rights, capital stock, lands and property of several coal companies that were then organized and existing as corporations under the laws of Pennsylvania, namely:

The Hillside Coal and Iron Company.
The Sugar Cabin Coal Company.
The North Mountain Coal Company.
The Standard Coal Company.
The Keystone Coal and Transportation Company.
The Northwestern Mining and Exchange Company.

D.—The Erie Railway Company, through its President and Trustee, Mr. Watson, conveyed, assigned, or transferred the bituminous coal lands that it had thus purchased to one of said companies, namely: The Northwestern Mining and Exchange Company, and the capital stock of that company was issued to Mr. Watson December 4, 1873, and in June, 1874, Mr. Watson assigned and transferred it to the Erie Railway Company, and the certificates issued to the latter company June 21, 1874; and in January, 1878, the certificates were cancelled, and new certificates issued to Mr. Jewett as Receiver.

E.—The Erie Railway Company, through its President and Trustee, conveyed, assigned, and transferred the anthracite coal lands it had pur-

chased to the following named companies, whose charters, franchises, and property it had purchased:

The Hillside Coal and Iron Company,
The Sugar Cabin Coal Company,
The North Mountain Coal Company,
The Standard Coal Company,
The Keystone Coal and Transportation Company;

and received for the same an issue of the capital stock of said companies to Mr. Watson as Trustee.

F.—The Erie Railway Company, by and through its officers and agents, caused and procured the companies last above named, and their charters, franchises, capital stock and property, to be merged and consolidated together, under and by virtue of the laws of Pennsylvania, into one corporation, under the name of the Hillside Coal and Iron Company, possessing all the franchises and property of each and all of said companies, and whose capital stock was issued in the place of the capital stock of the said companies to Mr. Watson, as the President and Trustee of the Erie Railway Company, in December, 1873. Mr. Watson afterwards, and in June, 1874, formally transferred this capital stock to the Erie Company; and in January, 1878, it was formally transferred to Mr. Jewett as Receiver.

G.—In the acquisition of these coal lands and properties by Mr. Watson as the trustee of the Erie Railway Company, certain moneys were paid on account of the purchase, and some existing mortgages that were a lien upon some of the said lands at the time of the purchase were assumed and other mortgages were executed; the amount of the said moneys paid and of the said mortgages assumed and executed constituting the aggregate amount of the purchase value that was paid for the same by the Erie Company.

When the legal title to said lands was formally transferred by said

Watson to said coal corporations it was conveyed subject to the said mortgages which were assumed by the said corporations, and the said corporations were charged in account by the Erie Railway Company with the amount of moneys that were originally paid by it for the said lands, and for the said charters, franchises and property.

After the formation of said Hillside Coal and Iron Company by said consolidation and merger, the moneys paid by the Erie Railway Company to that date for its lands and franchises were charged in account to that company; and subsequently, as payments on account of the development and improvement of said property of said company, or on account of the principal and interest on the mortgages assumed by it, became due, that said Hillside Coal and Iron Company could not pay, the Erie Company advanced the money and paid the same, which advances and payments were charged in account by it to and against the Hillside Coal and Iron Company, and so likewise in regard to the Northwestern Mining and Exchange Company. And from the time the said capital stock of said companies was issued to Mr. Watson, and until February 4, 1874, these two coal companies (the Hillside and Northwestern) were wholly worked, managed and carried on by the Erie Railway Company, through its officers and agents, and for its interest and advantage, and in the advancement and development of its said policy and plans, as heretofore described.

H.—At the time of the execution and delivery of the mortgage by the Erie Railway Company to the Farmers' Loan and Trust Company, described in the pleadings in this action, the situation and relation of these coal lands and coal interests and corporations to the said Erie Railway Company were as follows:

1. The Hillside Coal and Iron Company. This company had been fully organized, and was in possession of its lands and franchises, and all its capital stock had been issued in December, 1873, to, and was then held by, Peter H. Watson, as trustee of the Erie Railway Company. The Erie

Railway Company had advanced and paid on account of the lands, franchises and other property of this company the aggregate amount of $857,813.32, which was charged on account, as heretofore described. At that time the lands and property of this and the Northwestern Mining and Exchange Company and the property and interest of the Erie Railway Company were called and referred to by its officers and directors and agents as the coal lands of the Erie Company.

2. The Northwestern Mining and Exchange Company. This company had been fully organized, and had issued, December 4th, 1873, all its capital stock to Mr. Watson as the trustee of the Erie Railway Company. The Erie Railway had advanced and paid on account of the lands, franchises and other property of this company, $150,621.88, which was charged in account, as heretofore stated. At that time, as heretofore stated, the lands and franchises of this company and of the Hillside Coal and Iron Company were called and referred to by the officers, directors and agents of the Erie Railway Company as "the coal lands of the Erie Company."

3. The Glenwood Coal Company. Its whole capital stock and its bonds were held and owned by the Erie Railway Company, and it was operated as a coal company to supply coal for fuel to the locomotives and engines of Erie, as heretofore stated. (Gould held this stock for a long time previous as a trustee for Erie.) The Erie Railway Company worked this coal company almost exclusively for its own coal supplies.

4. The Towanda Coal Company. Its capital stock and its bonded indebtedness was owned and held by the Erie Railway Company, and had been so owned and held since 1868, and the company and its mines had been worked and managed almost exclusively to supply coal for the locomotives and engines of the Erie Railway Company.

K.—After the execution and delivery of the said mortgage of the

Erie Railway Company to the Farmers' Loan and Trust Company, and to the 26th day of May, 1875, the time of the appointment of the Receiver, these coal companies and their mines, lands and franchises were wholly managed, worked and carried on by the Erie Railway Company, through its officers and agents, and for its interest and advantage, and in the advancement and development of its said policy and plans, as heretofore set forth and described; and large sums of money were paid during said time by the Erie Railway Company as advances and payments on account of the lands and mines of the Hillside Coal and Iron Company, and the Northwestern Mining and Exchange Company; and portions of these payments and advancements were made from the proceeds of the sale of the bonds secured by the said mortgage.

The said payments and advances so made by the Erie Railway Company for and on account of said coal companies during said period, were as follows:

Hillside Coal and Iron Company, the aggregate amount of	$1,131,177 63
The Northwestern Mining and Exchange Company, the aggregate amount of.....	534,529 04

L.—After May 27, 1875, and to May 31, 1878, Mr. Jewett, as the Receiver of the Erie Railway Company, under the special direction of this Court, continued to manage and work said coal companies in the interest and advantage of the estate of the Erie Railway Company, and in furtherance of the same policy and plans heretofore set forth and described, and he paid large sums of money from time to time for and on account of the lands and mines of the said The Hillside Coal and Iron Company and The Northwestern Mining and Exchange Company. The said payments and advances so made by the said Receiver, during said term, were as follows:

To the Hillside Coal and Iron Co., aggregate amount of	$473,088 73
The Northwestern Mining and Exchange Co., aggregate amount of.....	454,153 64

The subject of these payments and advances was specially considered by this Honorable Court, upon the report of this Referee, in April, 1876, after a full investigation of the same, and, by the order of this Court, entered in the said two foreclosure actions. On the 25th day of May, 1876, all the payments and advances heretofore made by said Receiver to these two coal companies were fully approved, and he was authorized and directed to make such further payments and advances as he, in his judgment, deem expedient and necessary in the premises, to which order reference is hereby made.

M.—The several aggregate and total amount of moneys paid and advanced by the Erie Railway Company and its Receiver, for and on account of the lands, the charter and franchises, and the property of these coal companies (excepting the Glenwood and the Towanda Companies), are as follows:

From March, 1873, to the time of the delivery of the said mortgage by the Erie Railway Company to the Farmers' Loan and Trust Company, in March, 1874—

The Hillside Coal and Iron Company.....	$857,813 32	
The Northwestern Mining and Exchange Co.,		$150,621 88

From March, 1874, to May 27, 1875:

The Hillside Company.....	1,131,177 63	
The Northwestern Company.....		534,529 04
Total for each company.....	$1,988,990 95	$685,150 92

Add to this the total amount paid by the Receiver, to May 31, 1878:

The Hillside Company.....	$473,088 73	
The Northwestern Company.....		$454,153 64

Total amount paid by the Erie Railway and its Receiver:	
Hillside Company.....	$2,462,079 68
Northwestern Mining and Exchange Company.....	1,139,304 56
Total for both companies.....	$3,601,384 24

N.—In regard to the capital stock of the Lackawanna and Susquehanna Coal and Iron Company, the only facts that appear concerning the same are as follows:

This stock, amounting in par value to $40,000, was acquired by the Erie Company in 1873 from Gould, as a part of what is known as the restitution fund; that it is or was a coal corporation of the State of Pennsylvania, and with no particular relations to the Erie Company beyond the fact that the Erie Company has transported its coal to market; that in 1875 the Erie Company was offered about $6,000 for this stock, and that at the time of this reference it was estimated as valueless.

Fifth.—And I do further find that the following material facts are established of and concerning the capital stock and bonds of certain corporations described in said schedule (Exhibit M), as also the material facts and circumstances attending the acquisition of the stock and bonds of the said companies above named by the Erie Company, or by the Receiver, or concerning the disposal of the same, namely:

1. The Long Dock Company.
2. The Paterson, Newark and New York Railroad Company.
   The Paterson and Newark Railway Company.
   The Newark and Hudson Railroad Company.
3. The Pavonia Horse Railroad Company.
4. The Northern Railroad Company of New Jersey.
   The Nyack and Northern Railroad Company.

5. The Montclair and Greenwood Lake Railroad Company.
6. The National Stock Yard Company.
7. The Newburgh and New York Railroad Company.
8. The Jefferson Railroad Company.
9. The Buffalo, New York and Erie Railroad Company.
   The Avon, Geneseo and Mt. Morris Railroad Company.
   The Rochester and Genesee Valley Railroad Company.
10. The Buffalo, Bradford and Pittsburgh Railroad Company.
11. The Suspension Bridge and Erie Junction Railroad Company.
12. The Erie International Railway Company.
13. The Union Steamboat Company.
    The Union Dry Dock Company.
14. The Erie and Atlantic Sleeping Coach Company.
15. The Hoboken and Jersey City Horse Car Railroad Company.
16. The Monticello and Port Jervis Railroad Company.
17. Walkill Valley Railroad Company.
18. Bergen County Railroad Company.
19. New Jersey and New York Railroad Company.
20. New York and New England Railroad Company.
    Boston, Hartford and Erie Railroad Company.
21. Erie Railway Company.
22. Northern Central Railway Company.
    Southern Central Railroad Company.
23. Jefferson Car Company.
    Union Car Company.
24. International Bridge Company.
25. United States Express Company.
26. United States Towboat Company.
27. Pavonia Ferry Company.
28. Pennsylvania Transport Company.
29. Brooks Locomotive Works.
30. Compressed Air Safety Brake Company.

31. Harbor Wrecking Company.
32. Reno Company.
33. New York and Boston Express Company.
34. Mariposa Company.
35. New York and Pennsylvania Blue Stone Company.
36. Lamont Mining and Railroad Company.
37. Cleveland, Colorado, Cincinnati and Indianapolis Railroad Company.
38. New York and New Jersey Provision Dealers' Association.
39. Atlantic and Great Western Railroad Company.

The following statement of fact relates to all of said stocks and bonds that were acquired from Jay Gould or from the estate of James Fisk, Junior:

In December, 1872, there were several actions pending in the Court that had been instituted by the Erie Company against divers persons, for the purpose and with the object of recovering and obtaining restitution of capital stock and bonds, and other securities, assets and property that said Erie Company claimed belonged to it, and should be restored to its possession. One of these actions had been instituted and was then pending against Jay Gould, and on the 18th day of December, 1872, an agreement was entered into by and between The Erie Company and said Jay Gould, a copy of which appears in said Appendix, being No. 21 of Exhibit L, commencing on page 183 of the same, and to which reference is hereby made.

That, among other things, this agreement provided that said Gould should assign, transfer, and deliver to said Erie Company certain securities and property in said agreement specifically described. Said agreement was not fulfilled in all its terms and conditions for some time after the same was executed, but the greater part of the capital stocks and securities were assigned and transferred to said Erie Company before the appointment of said Receiver, and the last of the same were transferred to said Receiver as late as February, 1876. All of this property received under this agree-

ment by the Erie Company, or by the Receiver, was entered upon the books of the Erie Company in an account or statement called the restitution account or the restitution fund, and the same has always been known by that designation ever since. The securities thus received were entered at their par value, without any reference to their real or actual value. The ownership of the said securities and property, the possession of which the Erie Company acquired under said agreement, have been considered and treated by me as acquired by the Erie Company before the execution of said mortgage.

The legal title and possession of the real estate known as the Opera House property, in New York City, was acquired by the Erie Company under this agreement and settlement with Mr. Gould, and a large portion of the following capital stocks and bonds specifically described:

1. The capital stock and bonds of the Long Dock Company.

This is a corporation of the State of New Jersey, formed in 1856, by the action of the prominent stockholders and Directors of the Erie Company, for the purpose of obtaining and giving terminal facilities to the Erie Railway on the Hudson River, near and opposite to New York City, the termination of the Erie Railway being at that time at Piermont, on the Hudson River, about thirty miles above New York City. The lands now owned by the said Long Dock Company were acquired in the first instance by Homer Ramsdell, Esq., a prominent Director in the Erie Company, then known as the New York and Erie Railroad Company, who purchased the same, after consultation and agreement with the Directors of the said New York and Erie Railroad Company, for the use and occupation of the Erie Company, as soon as its friends and Directors could get the necessary legislation in the State of New Jersey, and form a company for utilizing it. These purchases were made by Mr. Ramsdell virtually for the Erie Company, at the instance and request of, its officers and Directors.

At that time the Erie corporation had no legal power to purchase, hold

and use these lands in the State of New Jersey, and it was proposed by the friends and Directors of the Erie Company to form an independent company in New Jersey that would secure to and for the use of the Erie Company, what it could not obtain in any other way. After the acquirement of the lands by Mr. Ramsdell, the necessary legislation was obtained in New Jersey, and Mr. Ramsdell, Daniel Drew, Samuel Marsh, Cornelius Smith, and others, directors and officers of the Erie Company, became stockholders in and organized the Long Dock Company. The latter company issued its stock and bonds, and the Erie Company provided the means to pay for both stock and bonds, thus enabling the Long Dock Company to make the necessary improvements on its property, including the tunnel through the hill on the Western portion of its lands, and to pay the money that had been expended in the purchase of its lands by Mr. Ramsdell and others. This company was, to all intents and purposes, at the time of its organization, and has been ever since, simply an auxiliary to the Erie Company, and it was formed simply for the purpose of giving the Erie Company a terminus at New York, and all the proceedings were made and taken to that end, and for the benefit of the Erie Company.

Mr. Ramsdell transferred these lands so purchased by him to the Long Dock Company, at the instance and request of the officers and Directors of the Erie Company, and in conformity with a note from its Board of Directors, and in consideration of being paid the moneys he had expended for the same, and being relieved from the unmatured obligations he had assumed in regard to the said purchase, (the whole amounting to something over $800,000). The Erie Company paid him, or provided for the payment of the said moneys actually advanced by him for said lands, and relieved him from the said unmatured obligations; and afterwards the Erie Company purchased all of the capital stock of said Long Dock Company, and guaranteed the bonds of said company, and has ever since owned the said stock. It also entered into a contract or lease with the Long

Dock Company, which appears in the testimony and proofs as No. 32 of Exhibit H. Immediately previous to the purchase of these lands and the formation of the Long Dock Company, the Erie Company had leased the Paterson and Hudson River Railroad and the Ramapo & Paterson Railroad, which connected Jersey City with the main line of the Erie Railway at Sufferns, New York. Under the lease of the Paterson & Hudson River Railroad, it held and possessed one block of land in Jersey City, 200 x 400 feet in size, and on that piece of land the Erie Company transacted its principal business with New York City. Its terminus proper at Piermont was of little use or service during the winter for its New York connection, and a terminus at Jersey City on the Hudson River, and opposite New York City, was an imperative necessity for the business and welfare of said Erie Company, and the whole matter of the acquisition of these lands, the formation of the Long Dock Company, the acquirement of its whole capital stock, and the guaranty of its bonds and the execution of the lease or contract above referred to, was for the interest and benefit of the Erie Company, and was conceived and carried into operation by its stockholders, officers, and directors. Whatever liability any of the latter persons assumed was at the instigation and request of the Erie Company, and all such personal liability was afterwards assumed and provided for by the Erie Company. In point of value, it may be said that all of the property of the Long Dock Company is actually occupied and used by the Erie Company, with its tracks, warehouses, shops, depots, and terminal facilities of every character. There is some outlying land back of the dock, upon and over the hill, that is not in actual use by the Erie Company in this manner, but it is of little value comparatively with the land and property in actual use and occupation. At the time of the execution of the mortgage in question, the Erie Company owned all the capital stock of the Long Dock Company, and had for a long time occupied and used its lands, tunnel, and water front, as if it was a component part of the Erie Railway, as in truth and fact it is, and could not

then and cannot now be separated from the Erie Railway without taking away an integral and most important part of the same. Originally, strict accounts were kept between the Erie Company and the Long Dock Company, but since many years past, and since the said mortgage was executed, no separate accounts have been kept with the Long Dock Company and the Erie Company. The property of the Long Dock Company is the terminus of the Erie Company, and it is impracticable to keep any accounts of the separate interests of the two companies; and the Erie Company, and the Receiver, and their officers and agents, including the Auditor, consider it impracticable to keep a separate account of the earnings and expenses of the respective companies, either by the books of the Long Dock Company or those of the Erie Company. It is deemed impracticable to separate them, and when the Erie Company or the Receiver pays anything on account of the bonded indebtedness of the Long Dock Company, it has been charged on the real estate account of the Erie Company just as if it owned the property. The Long Dock Company has bonds outstanding to the extent of three millions of dollars, guaranteed by the Erie Railway Company, the interest of which the Erie Company pays as the same falls due. The interest of the Erie Railway Company in the property of the Long Dock Company is whatever that property is worth over and above this bonded indebtedness. At the time of the appointment of the Receiver, the Erie Company owned $11,000 of the bonds of the Long Dock Company, but the same were pledged as security for loans made by the Erie Company. The Receiver afterwards redeemed the same, and afterwards, and in 1876, sold them for the sum of $11,500.

The Long Dock property is situated in Jersey City, beginning on the westerly side of the Bergen Tunnel, and extending thence to the Hudson River, being principally occupied for railroad uses and purposes by the Erie Company, and is more fully described in the mortgages executed by the Long Dock Company, copies of which are herewith transmitted, marked as "Exhibits Nos. 2 and 3 of August 6th, 1879."

2. Capital stock of the Paterson, Newark and New York Railroad Company, and the Newark and Hudson Railroad Company, and the mortgage bonds of the Paterson and Newark Railroad Company, and of the Newark and Hudson Railroad Company (see schedule, Exhibit M).

The Paterson, Newark and New York Railroad Company is the corporation formerly known as the Paterson and Newark Railroad Company, and its property is subject to the lien of the mortgage bonds of the company, executed under its former name (The Paterson and Newark Railroad Company). This railroad, extending from Paterson to Newark, and the Newark and Hudson Railroad, extending from Newark to New York, are and have been, important branch lines of the Erie Railroad.

In September, 1868, the Erie Company leased the Paterson and Newark Railroad for the term of its charter at an annual rent of thirty-five per cent. of its gross earnings, guaranteed to be equal to seven per cent. per annum of its bonded indebtedness of $500,000. It also acquired all its capital stock and $235,500 of its bonded indebtedness prior to the execution of said mortgage. Thus, by the ownership of this lease and of the said capital stock and bonds of the said Paterson and Newark Railroad Company, the Erie Company virtually owned this railroad and railroad corporation at the time of the execution of said mortgage, subject only to a bonded indebtedness of $264,500.

At some time after the execution of said lease the name of this corporation was changed to its present name—the Paterson, Newark and New York Railroad Company.

At the time of the appointment of the Receiver $55,500 of these bonds were outstanding and pledged as collateral for the indebtedness of the Erie Railway Company to the Fourth National Bank of New York, and $115,000 was in like manner pledged to Drexel, Morgan & Co., all of which were afterwards redeemed by said Receiver, in accordance with the orders of this Court, by the payment of said indebtedness.

Subsequently to the appointment of the Receiver he acquired an addi-

tional $249,000 of the bonded indebtedness of said company, at an aggregate cost of about $235,150.

In January, 1872, by a contract in the nature of a lease (see copy of same transmitted with others, under No. 34, Exhibit L), the Erie Company acquired the use and possession of the Newark and Hudson Railroad for the term of its charter, by the payment, as annual rent, of the sum of $500, and six per cent. per annum on its capital stock ($250,000), and seven per cent. on its bonded indebtedness ($250,000).

At and about the same time (1872) the Erie Company acquired $249,800 of the capital stock of this company, leaving only $200 of the same owned otherwise, and at and about the same time it acquired all the bonded indebtedness of this company, namely, $250,000, so that by virtue of the said lease of the railroad and the ownership of the capital stock and bonds of the said Newark and Hudson Railroad Company, the Erie Company virtually owned this railroad and railroad company before and at the time of the execution of the mortgage. At the time of the appointment of the Receiver $50,000 of those bonds were outstanding and pledged as collateral for the indebtedness of the Erie Company to the New York Guaranty and Indemnity Company, and $200,000 was in like manner pledged to Drexel, Morgan & Co., all of which were afterwards redeemed by said Receiver, in accordance with the order of this Court.

3. The capital stock and bonds of the Pavonia Horse Railroad Company.

This is a corporation of the State of New Jersey; it was organized and its road built and stocked through the action of the Directors and officers of the Erie Company, and for its use and interest, in order to increase its passenger traffic and to afford convenience to its passengers on its ferries and trains.

This road was built by the Erie Company for the double purpose of increasing its passenger traffic, and also to open a thoroughfare to the lands held by the Erie Company through the Long Dock Company lying on the

top and over the hill, known as Bergen Heights, access to which theretofore was impracticable.

It was concluded that the construction of this road would bring a large part of the New York travel, that passed over other ferries, and that the lands aforesaid could be brought into market and a sale made of the same.

Its whole capital stock was 450 shares, of $100 each, or $45,000. The Erie Company acquired $34,000 of its capital stock in 1869, and $10,000 in July, 1874; it also acquired $91,500 of its bonded indebtedness before the Receivership, of which $51,000 was acquired before the execution of the said mortgage, and $40,500 thereafter. The Receiver acquired $1,000 of its bonds in 1875 This railroad was never leased to the Erie Company, but the Erie Company had the possession, use and management of the same, and virtually its ownership, before the execution of said mortgage, by virtue of being the owner of its stock and bonds, as heretofore stated, and has continued in such use and management. Its property consists of horses and cars, right of way, and franchises to maintain a horse railroad from Long Dock and the Erie Depot, in Jersey City, to what is known as the West End, and the five corners on Bergen Hill. All its bonds are guaranteed by the Erie Company.

4. Capital stock of the Northern Railroad of New Jersey, of the par value of $900, and of the estimated value of $495, the latter amount being the sum for which the Receiver sold the same in December, 1875.

Capital stock of the Nyack and Northern Railroad Company, of the par value of $16,100, and of no estimated value; and bonds of the same company of the par value of $3,000, and of the estimated value of $1,800, the latter amount being the sum received by the Receiver on the sale of the same in August, 1876.

The above securities were acquired by the Erie Company in 1873. These two roads form a line with the Erie Railway from Jersey City to

Nyack, and are operated by the Erie Company under a contract with the Northern Railroad Company of New Jersey, executed December 31, 1868, a copy of which is transmitted with the testimony and proofs, and is referred to in the Appendix under No. 31 of Exhibit H, and No. 34 of Exhibit L.

The capital stock and bonds of the Nyack and Northern Railroad Company were acquired by the Erie Company by recovering the same from Gould, being a part of what is known as the "Restitution Fund."

At the time of the appointment of the Receiver these bonds were pledged by the Erie Company as collateral for its indebtedness to S. L. M. Barlow, and were redeemed by the Receiver.

5. Capital stock of the Montclair and Greenwood Lake Railroad Company.

Prior to 1874 the Montclair Railway Company had been organized as a corporation of the State of New Jersey, to build a railway from the Erie tunnel to Montclair.

The Erie Railway Company had purchased $1,000 of the mortgage bonds of the company, and had the same at the time of the execution of said mortgage, and at the time of the appointment of said Receiver.

Afterwards the said Montclair Railway Company was reorganized, and became the Montclair and Greenwood Lake Railroad Company, and the Receiver exchanged these bonds for $100,000 of the capital stock of the last named company.

6. Capital stock and bonds of the National Stock-Yard Company.

The Erie Company acquired $232,200 of the stock, and $655,000 of the bonds of said company, prior to March 15, 1874. The Receiver acquired $549,500 of its stock, and $10,000 of its bonds. The estimated value of all these bonds is $332,500. No estimated value is given in regard to said stock.

This company was organized as a corporation of New Jersey prior to 1872, for the purpose of receiving from and delivering to the Erie Company at Oak Cliffs, New Jersey, on the line of the Erie Railway, cattle and other stock. The par value of all its stock issued at the time of its incorporation in 1869, was $1,000,000. Its property consists of real estate, cattle-yards and buildings in New Jersey, near the Hudson River, and upon property formerly known as the Gregory Farm. The Erie Company bought the property and constructed the cattle-yards and buildings upon the same, and transferred it to the Stock-Yard Company after its organization, taking its bonds and stock in payment thereof. The Erie Company acquired $50,000 of its stock in 1870; in 1873 it acquired from Mr. Gould, in what is known as the Restitution Fund, $182,200 of its stock. The entire issue of the bonds of this company was $666,000. The Erie Company purchased all of the same prior to 1872, except one.

At the time of the appointment of the Receiver $150,000 of these bonds were outstanding and pledged as collateral security for the indebtedness of the Erie Company, and were afterwards redeemed by the Receiver.

The Receiver acquired $549,500 of this stock, which, added to the amount then held as Receiver ($232,700), makes the aggregate amount of $781,700 of its capital stock and $655,000 of its bonds in the possession of the Receiver on the 1st day of June, 1878.

From the time of the purchase of this property by the Erie Company and its transfer to the Stock-Yard Company, this corporation and its property has been managed and controlled as an auxiliary company to, and in and for the interest of the Erie Company.

It was organized by the officers and directors of the Erie Company and others, and all of its capital stock belonged and should have been issued to the Erie Company, but the same was issued and distributed to a large circle of officers and friends of officers, of the Erie Company, without consideration.

Under Mr. Watson's administration, the Erie Company instituted an action in the courts of New Jersey to vacate and set aside the deed of this property, and to have this stock declared void, or transferred to the Erie Company as its real owner.

Pending this action, a large part of the capital stock that was held by Gould & Fisk and others was surrendered and transferred to the Erie Company. Other holders of said stock offered to sell it at nominal rates, and it was purchased to avoid the necessity of continuing this action. And thus all, or nearly all, of this capital stock has been acquired by the Erie Company and the Receiver.

The property of this Company and the cattle yards and other erections thereon, are actually necessary to the Erie Company for a depot for its live freight. The estate and interest of the Erie Company in this property is based upon the ownership of the greater portion of its capital stock.

7. Mortgage bonds of the Newburgh and New York Railroad Company.

Par value $166,000, estimated value $83,000. This company is a corporation of the State of New York, and was organized prior to 1866, for the purpose of building a railroad from Vail's Gate, near Turner's Station, on the Erie Railway, northerly to the main line of the same at a station called Newburgh Junction, a distance of over twelve, and nearly thirteen miles (see Map, Exhibit No. 1 of August 6, 1879).

Before the road was built, and on the 5th day of October, 1866, this corporation entered into a contract with the Erie Company substantially as follows:

This company agreed to construct and complete its railroad within three years, to the satisfaction of the Erie Company, and to lease the same to the latter company for the term of its charter, at the yearly rent of $30,000, payable in January and July of each year thereafter, the first payment to be made in July, 1867, provided the work of construction was

commenced before then (a copy of this contract is transmitted with other leases and contracts of railroads, referred to in said Appendix as No. 34, Exhibit L).

This company issued and sold its mortgage bonds, $250,000. They were endorsed or guaranteed by the Erie Company, and the above amount ($166,000) was acquired by Erie by purchase as early as 1870. At the time of the appointment of the Receiver, $91,000 of these bonds were outstanding and pledged as collaterals for the indebtedness of the Erie Railway Company to the Fourth National Bank, and $75,000 of these bonds were pledged by the Erie Company for its indebtedness to Drexel, Morgan & Co., all of which were afterwards redeemed by the Receiver paying said indebtedness.

It also acquired all of its capital stock prior to 1871, and since then the road has been managed and run by the Erie Company as the Newburgh Branch of the Erie Railway.

This road and the contract relating to it appear in said Appendix (No. 30, Exhibit H), and has also appeared in the annual reports of Erie Company as a leased line, and was so treated and considered in this reference at the time of submission of April 5, 1879.

At the subsequent continuance of the hearings of the case, the fact appeared from oral testimony that this company and its road had been consolidated or merged into the Erie Railway Company under the statutes of the State of New York.

No. 31 of Exhibit H (see Appendix, between pages 56 and 57) was stipulated into the case in June, 1879, but the fact that this road did not appear in this last Exhibit as a leased line was not noticed by the Referee until since the last submission of the case. On inquiry of the secretary of the company for the reason of this omission, the Referee was informed that it was not a leased line, but a part of the Erie Railway proper, and was referred to resolution of said company, adopted March 21st, 1871. This action of the Erie Company was not proven before the Referee, but

he now reports a copy of said resolution, instead of calling the parties together to consider the same, namely:

"On motion of Mr. Thompson, seconded by Mr. Ramsdell, the following "action was taken:

"Whereas, the greater part of the capital stock of the Newburgh and "New York Railroad Company has been surrendered to this company, "and to facilitate the operation of said road and simplify the reports "required by law,

"*Resolved*, That under the Act of the Legislature, Chapter 302 of the "Laws of 1855, the Directors of this Company elect to become ex-officio "the Directors of said corporation so held under lease, and manage and "conduct the affairs thereof, as provided by law."

This line was built by the Erie Company for the purpose of shortening the distance between New York and Newburgh, and to enable it to compete successfully with the Hudson River Road, for freight and passenger traffic.

8. Capital stock and bonds of the Jefferson Railroad Company.

This company was organized as a Pennsylvania corporation, for the purpose of constructing a railroad from the main line of the Erie Railway at Susquehanna to Carbondale, Pa., and also a railroad between Honesdale and Hawley, both in Pennsylvania, connecting at the latter place with the Hawley Branch Railroad that connects with the Erie main line at Lackawaxen, Pa., the said Hawley Branch Railroad being a leased branch line of the Erie Railway.

These several branch roads appear on the said map (Exhibit No. 1, August 6, 1879), and are also referred to and fully described in No. 31 of Exhibit L of said Appendix.

The Erie Company leased from the Jefferson Railroad Company that portion of the road lying between Hawley and Honesdale, and called the Honesdale Branch, in January, 1869, and the portion between Carbondale

and Susquehanna in November, 1870. (Copies of these leases are transmitted with the testimony and proofs, and are referred to and described in said Appendix in No. 31 of Exhibit H, and in No. 34 of Exhibit L.)

The whole amount of capital stock of this company is the sum of $2,096,050 at par value. At the time of the execution of the said mortgage the Erie Company was in the use and occupation of said railroad under said leases, and had acquired of the capital stock of said Jefferson Railroad Company the amount of $2,044,800.

The bonds of this company, amounting to $2,000,000, were guaranteed by the Erie Company when issued; but the Erie Company had acquired, before the execution of the mortgage, $714,000 of these bonds. The estimated value of these bonds is from 75 to 80 per cent. of their par value.

This road is essentially a coal road, and has for a long time supplied a large amount of coal traffic to the main line at Lackawaxen and Susquehanna from the coal mines of Northern Pennsylvania, and is and has been for a long time a valuable auxiliary to the Erie Company, and was considered, at the time of the execution of said mortgage, as an integral portion thereof.

At the time of the appointment of the Receiver $489,000 of these bonds were pledged by the Erie Company as collateral for its indebtedness, and the same were afterwards redeemed by the said Receiver.

This road was actually and practically built by the Erie Company, and all of its capital stock should have been issued, in the first instance, to the said company; but it was issued and distributed among, and held by, many persons who were not entitled to it. But the same was finally surrendered to the Erie Company.

It was at the time of the execution of the mortgage, and is now, one of the most important branches, in every sense, of the Erie Railway.

These coal roads, as also the Buffalo, Bradford and Pittsburgh Railroad, were acquired by the Erie Company for the purpose of supplying it with

fuel for its locomotives, &c., and also to bring traffic or freight from the oil and coal fields of Pennsylvania to the main line and to market.

9. The capital stock and bonds of the Buffalo, New York and Erie Railroad Company, and the capital stock of the Rochester and Genesee Valley Railroad Company, and the Avon, Geneseo and Mount Morris Railroad Company.

In 1863 the Erie Company became possessed of the railroads and property and franchises of the Buffalo, New York and Erie Railroad Company, and of the Rochester and Genesee Valley Railroad Company, under and by virtue of several contracts and leases, executed by and between the Buffalo, New York and Erie Company and the Erie Company in February, 1863, and in April, 1874. (Copies of which are herewith transmitted with the testimony and proofs, and reference made thereto in said Appendix under Nos. 32 and 34 of Exhibit H, page 57, and No. 34 of Exhibit L, page 229); and the Erie Company became possessed of the Avon, Geneseo and Mount Morris Railroad, under and by virtue of a written lease bearing date of December 27, 1873 (a copy of which is hereby transmitted and referred to in said Appendix, page 229, under No. 34 of Exhibit H).

Under the conditions of the contracts first above named, 1,494 shares of the capital stock of the Rochester and Genesee Valley Railroad Company, of $100 each, were transferred to the President and Vice-President of the Erie Railway Company, and the President of the Buffalo, New York and Erie Company, to hold as trustees. The same capital stock is now held in trust by the Erie Railway Company, and is the same set forth and described in said schedule (Exhibit M), under letter "D" of the IIId division thereof. Under the conditions of the lease from the Avon, Geneseo and Mt. Morris Railroad Company above referred to, $30,750 of the capital stock of the last named company was transferred and delivered to the President of the Erie Railway Company to hold as trustee for the last named company, as prescribed in said contract by the Erie Railway

Company, and is the same capital stock described in said schedule (Exhibit M), under letter "D" of the IIId division thereof.

From the time of the execution of the said contracts and leases, these several railroads made and composed an integral part of the railroads and system of railroads of the Erie Railway Company, and at the time of the execution of said mortgage the estate, rights, and franchises of the Erie Railway Company therein, excepting the said Avon, Geneseo and Mount Morris Railroad Co., were included in said mortgage. The railroad property and franchises of the Buffalo, New York and Erie Company were and afterwards became so important and necessary to the Erie Company, that the acquirement of its capital stock was clearly a matter of good policy, if not of necessity, for the present and future welfare and prosperity of the Erie Company; for this road is the most important part of the Erie Railway, as by and through the same, alone, access is obtained to the lakes at Buffalo, and to Canada, by the International and Suspension Bridges. After the execution of the above described leases, and while Mr. Watson was President of the Erie Company, he and the directors were advised and induced to believe that these leases might prove to be invalid; and they deemed it necessary for the interests of the Erie Company that it should purchase and own the capital stock of this company, and in accordance with this belief, purpose, and policy, the Erie Company entered upon and continued in the acquirement and purchase of said capital stock.

Before the execution of said mortgage the Erie Company had acquired $574,900 of the capital stock of the Buffalo, New York and Erie Company, and $49,000 of its bonded indebtedness, and April 2, 1874, it acquired $1,000 more of its capital stock, making the total amount of capital stock $575,900, and of 1st consolidated bonds, $49,000. The whole capital stock of the Buffalo, New York and Erie Co. was and is $950,000, of which the Erie Co. owned a majority of shares as early as 1873.

The said Receiver, subsequent to his appointment, and in 1876, pur-

chased $255,000 of the bonds of this company, but in March, 1877, disposed of the same, together with the $49,000 previously owned by the Erie Co.

At the time of the execution of said mortgage the said Erie Co., by virtue of said leases and contracts, and a holding of a majority of the capital stock of said Buffalo, New York and Erie Co., not only owned and controlled the said railroad as lessee, but it also owned and controlled the same by virtue of being the owner of a majority of the shares of its capital stock.

At the time of the appointment of the Receiver, $75,900 of this stock had been pledged by the Erie Co. as collateral to the Pennsylvania Coal Co., and $300,000 of the same was in like manner pledged to E. D. Morgan, and $200,000 pledged in like manner to the National City Bank, all of which was afterwards redeemed by the said Receiver by the payment of the debts secured thereby.

10. Capital stock and bonds of the Buffalo, Bradford and Pittsburgh Railroad Company.

This road is familiarly known as the Bradford Branch of Erie, and runs from the main line of the Erie Railway at Carrolton, N. Y., to Gilesville, Pa. It is a Pennsylvania corporation. The road was leased to the Erie Co. January 5, 1866, for the term of 499 years, at the annual rent of 7 per cent. on its outstanding bonds, amounting to $580,000. A copy of said lease is transmitted herewith, and referred to and described in No. 31 of Exhibit H and No. 34 of Exhibit L.

The road and the corporation has been always managed by the Erie Co. as an auxiliary, and a branch of its main line connecting the same with coal and oil fields of Pennsylvania.

The Erie Co. acquired $2,017,700 of its capital stock and $185,500 of its bonds before the execution of said mortgage. The estate and franchise of

the Erie Co. in this company and its railroad are included within the property described in said mortgage.

$50,000 of these bonds were outstanding as collateral security for the indebtedness of the Erie Co. to T. B. Wallace & Co. at the time the Receiver was appointed, and the same were afterwards redeemed by said Receiver.

It has become one of the most important branches of the Erie Railway, because of its furnishing a large freight traffic in coal and oil, and also because of its extension to the vicinity of what is known as the Erie Coal lands, heretofore described.

The estate and interest of the Erie Company in this railroad and its franchises are represented by the capital stock, bonds of said company, and the lease aforesaid.

11. Capital stock and bonds of the Suspension Bridge and Erie Junction Railway Company.

This company is a corporation of the State of New York, with a capital of $500,000, and a bonded debt of $1,000,000. All of its bonds were guaranteed by the Erie Company.

It connects the main line of the Erie Railway at East Buffalo with the Suspension Bridge, a distance of twenty-three and one-half miles. This company was organized and its road was built by the action of the stockholders, directors and officers of the Erie Company, and the whole expense of the same was paid from the treasury of the Erie Railway Company; and if the affairs of the Erie Company had been properly and justly managed at the time, the whole of the capital stock and bonded indebtedness would have been owned by the Erie Company, for it had paid all the moneys that said stock represented, and no other person or corporation had any legal or equitable right to the same: but the stock was distributed and given away without consideration to the officers and friends of the officers of the Erie Company. Afterwards, and during the

administration of Mr. Watson, the Erie Company claimed that the whole of this capital stock belonged to it, and suits were instituted against many persons to recover shares of the stock held by them; and much was recovered and transferred to the Erie Company, and much more was surrendered and transferred without suit, and many of the holders transferred their stock to the Erie Company at nearly nominal prices, until the Erie Company had acquired a majority of the shares of said capital stock.

The Erie Company had acquired, and held in its possession, prior to the date of said mortgage, $144,500 of its capital stock, and, subsequently, and prior to the Receivership, it acquired $80,800 of said stock from Jay Gould and others, in what is known as the Restitution Account, all of which may be treated as stock owned by the Erie Company before the date of the mortgage. The Erie Company had also acquired, before the date of the mortgage, $35,000 of the bonds of this company. After the Receiver was appointed, he acquired from divers persons quantities of this stock, at a price much below its value, the Receiver claiming that by right the same belonged, when issued, to the Erie Company, and in that way he recovered $245,000 of this capital stock at an aggregate cost of about $35,000. This placed the company, by its said Receiver, in the possession of $470,300 of the $500,000 capital stock of said company.

And I find, as a material fact, that the Erie Company owned the last mentioned amount of the capital stock of the said company at the time of the execution of said mortgage.

It appears as one of the leased lines of the Erie Railway, by a lease executed July 13, 1870, at an annual rent of 30 per cent. on its gross earnings, guaranteed by the Erie Company to be equal to $105,000 per annum, of which $70,000 per annum consists of interest to be paid on the issue of bonds ($1,000,000), and the remainder as dividends or interest upon its capital stock. (A copy of said lease is transmitted herewith, and referred to and described in No. 31 of Exhibit H, and No. 34 of Exhibit L.)

At the time of the appointment of the Receiver, the aforesaid $35,000

of bonds were outstanding and pledged as collateral security for the payment of the indebtedness of the Erie Company, and were afterwards redeemed by said Receiver.

So that, at the time of the execution of said mortgage, the Erie Company virtually owned the Suspension Bridge and Erie Junction Railroad Company, and its railroad, franchises, and capital stock, subject only to its bonded indebtedness of $1,000,000, less $35,000. First, the Erie Company had a lease of the same for the life of its charter; second, it owned nearly all its capital stock; third, it had possessed and used the same as an important branch and connection of the railway of the Erie Company from the time of its construction as an integral part of the same, thereby connecting at Suspension Bridge with the Great Western Railway, and all its connections.

This road and the Erie International Railroad were built by the Erie Company under separate organizations, because the New York Central Company would not permit the Erie Company to extend its tracks across the road of the New York Central, in order to connect with the Canada railroads. And these branches are now the only means of communication and connection from the main line of the Erie Railway with the Canada railroads.

12. Capital stock of the International Railway Company.

This company is a corporation of the State of New York. It was organized in 1873, in the interests and for the service of the Erie Company, and to construct a railroad from the main Erie line at East Buffalo to the International Bridge at Black Rock, for an Erie connection with the Grand Trunk, the Canada Southern and other railroads of Canada.

The Erie Company acquired all the capital stock of this company at the time or soon after its organization, and constructed the railroad and has always used and operated the same as a branch of the Erie Railway, and the same is known and designated on its books of account and record as

"The Erie International Branch." The Erie Company constructed this road in 1873 at a cost of about $300,000, which amount represents the whole value or money invested by the Erie Company in this road and the whole cost of the same to the Erie Company.

This company has been kept as a separate corporation or organization, and the Erie Company has annually elected its Directors, being the only stockholder and owning all the shares of its capital stock; but in truth the road and all its franchises, like the Suspension Bridge road, has been managed and operated ever since its construction by the officers and agents of the Erie Company, as an important branch and integral part of the Erie Railway.

The Erie Company built this road and paid for it, and has always possessed and managed it in connection with its main line, and its possession and ownership has never been disputed. The Erie Company was compelled to organize this company and construct this road under a separate organization, because the New York Central Company refused to allow the Erie Company to extend its tracks across the Central road, to connect with the International and Suspension Bridges.

At the time of the execution of the mortgage in question this company had been organized, its stock issued to and owned by the Erie Company, and the latter company had constructed its road and was in its actual use and occupation as a part of its system of railroads.

13. The capital stock of the Union Steamboat Company and the Union Dry Dock Company.

This company is a corporation of the State of New York, organized prior to 1870 by the Erie Company to build, operate, and manage a line of steamers in connection with the Erie Company, to carry passengers and freight from Buffalo to ports and places on Lakes Erie, St. Clair, Huron, Superior, and Michigan. Whole amount of capital stock, $1,000,000.

In order to maintain a successful competition with other railroads for

the transportation of freight from New York to westward points, it became the interest and policy of the Erie Company to own and run steamboats and sailing vessels on the lakes west of Buffalo; and it built the vessels required, and held and managed the same, under a separate organization or corporation, known as the Union Steamboat Company, all or the greater part of the capital stock of which was issued to, and owned by the Erie Company. And the steamboats and vessels of this company constitute, in fact, an extension of the Erie Railway line, by water, to all the lake ports of the west, for the purpose of transporting freight.

The company was organized and its boats built to run exclusively for the Erie Company and to carry freight and passengers in connection with the Erie Company, and to be operated and managed entirely and exclusively in and for the interests and under the direction and control of the Erie Railway Company and its officers and agents.

The Erie Company lent and advanced moneys at the time of the organization to the Union Steamboat Company, and acquired a majority of the shares of its capital stock. The money so advanced for said stock by the Erie Company enabled the Union Steamboat Company to build its steamboats and start in business. Prior to the execution of said mortgage the Erie Company had acquired $762,800 of the capital stock of the Union Steamboat Company. Subsequently, and prior to the Receivership, it acquired an additional amount of $106,200, and the Receiver acquired an additional amount of $125,000, at an aggregate cost of $89,450, and on the first day of June, 1878, the Receiver had in his possession $994,000 of this capital stock, leaving only $6,000 of the whole capital stock owned or held by other persons.

At the time of the appointment of said Receiver, and ever since, this capital stock has been worth the par value of the same.

This company is a valuable auxiliary to the business of the Erie Company in many ways, so much so that it may be considered almost an

absolute necessity for the convenient and profitable transaction of its business.

The Union Dry Dock Company was organized by the Erie Company as a necessity from the organization and operation of the Union Steamboat Company, for it was organized as a company to build and repair the steamboats of the latter company at Buffalo, N. Y.

It has a capital stock of $300,000, all of which the Union Steamboat Company and the Erie Company took or acquired at the time of its organization, each company taking one-half, or $150,000, and with the money paid for the same the property was acquired and the docks and buildings and machinery constructed.

This company does work that offers from other persons and corporations that it can do, in addition to doing the work of the Union Steambot Company, and it is managed by the officers and agents of the latter company, who are also in fact the officers and agents of the Erie Company. This stock is worth its par value.

14. Capital stock of the Erie and Atlantic Sleeping Coach Company.

This company was organized in 1870 as a corporation of the State of New York, to build drawing-room and sleeping cars, and to manage and use the same on the Erie Railway.

Its capital stock is $500,000. The Erie Company acquired $153,800 of its capital stock soon after its organization, and entered into a contract with said company in regard to the use and management of said cars on the Erie Railway and its branches.

Some time in 1873 or 1874 the Pullman Palace Car Company purchased all of the capital stock of the company, except what was owned by the Erie Company, and ever since said purchase the Pullman Palace Car Company has managed the affairs of this company as a separate corporation.

This stock was estimated at its par value—$153,800. This interest in said capital stock was acquired by the Erie Company, and the said con-

tract executed by it, for the purpose of supplying the Erie Railway Company with this class of cars for the accommodation of its passengers, and especially for its passengers ticketed through to distant points beyond the western terminus of the Erie Railway; as by its arrangement with the company and the Pullman Palace Car Company, passengers have been and are transported without change of cars, from New York to Chicago, and other places. At the time of the execution of said mortgage the Erie Company owned this stock, and at the time the Receiver was appointed $41,700 thereof had been pledged, and was then outstanding as collateral security for the indebtedness of the Erie Company to the New York Guaranty and Indemnity Company, and $112,100 for its indebtedness to Drexel, Morgan & Co., all of which was afterwards redeemed by the said Receiver by the payment of the said indebtedness.

15. The capital stock of the Hoboken and Jersey City Horse Car Railroad Company.

This stock, to the amount of $6,000, was acquired by the Erie Company in 1869, and it owned all the same at the time of the execution of said mortgage. In July, 1876, the Receiver sold this stock at the rate of 40 per cent. on its par value, namely, for the sum of $2,400, that being its real and estimated value at the time.

16. The capital stock of the Monticello and Port Jervis Railroad Company.

This company was organized to construct, and did construct, one of the said branches of the Erie Railway, extending from Port Jervis to Monticello, and this stock was acquired by the Erie Company prior to 1873, in payment for labor and materials furnished to it by the Erie Company. The Monticello and Port Jervis Railroad was mortgaged for a bonded indebtedness, and the mortgage has been foreclosed and the road sold, and a new company organized to manage the same. This stock is valueless.

17. Capital stock of the Walkill Valley Railroad Company.

This company was organized for the purpose of constructing, and did construct, a railroad to connect with the Erie Railway at Montgomery, and extending thence to Rondout and Kingston, thus adding to the importance and value of the Montgomery branch of the Erie Railway.

The Erie Company acquired $19,900 of its capital stock prior to 1873; the company became insolvent in 1876, and its road sold under foreclosure of a mortgage, and subsequently reorganized. The entire value of this stock was extinguished by said proceedings, and the same is utterly valueless.

18. The capital stock of the Bergen County Railroad Company.

This company was organized as a New Jersey corporation for the purpose of building a railroad to connect with the Erie Railway. The company incurred an indebtedness to the Receiver, in payment for which the stock was acquired by him. The company has built no railroad, and this stock may be considered as valueless.

19. Mortgage bonds of the New Jersey and New York Railroad Company.

The road of this company connects with the Erie Railway at Hackensack Junction, running from thence to Hackensack and to Haverstraw. These bonds, amounting to $34,000, were acquired by the Erie Company in February, 1875; since then the company has passed into the hands of a Receiver, and the bonds are of very little value, and not worth to exceed $850.

20. Capital stock of the New York and New England Railroad Company, and bonds of the Boston, Hartford and Erie Railroad Company.

This last named company was organized to build a railroad connecting Boston and Hartford with the Erie Railway at Newburgh, on the Hudson, and was considered to be a very valuable and important connection

for the Erie Company, and in furtherance of the construction of the said road, the Erie Company guaranteed to pay the interest on $4,000,000 of its bonds, and also guaranteed to pay the principal and interest of $4,000,000 of its bonds. The Erie Company acquired originally $729,000 of the bonds in 1868; afterwards this company was reorganized and its name changed to the New York and New England Railroad Company, and the company, under its new name and organization, assumed the liability of the bonded indebtedness of the Boston, Hartford and Erie Company, to the extent of exchanging its capital stock for the bonds of the latter company, and in May, 1874, the Erie Company exchanged $100,000 of these bonds for a like amount of the capital stock of the New York and New England Railroad Company, leaving in the possession of the Erie Company $629,000 of these bonds. In addition to these bonds, the Erie Company owned unpaid interest coupons thereof, accruing from February 4, 1874, to June 4, 1878, to the amount in par value of $926,275. The estimation of the value of these bonds and coupons is based upon their value to exchange for the stock of the New York and New England Railroad Company, and upon the market price of the same; and their value was estimated by competent evidence to be the sum of $75,480, and the value of the New York and New England Railroad Company stock at the sum of $2,000.

At the time of the appointment of the Receiver $100,000 of these bonds were pledged for the indebtedness of the Erie Company, to Duncan, Sherman & Co., and $63,000 to T. B. Wallace & Co., all of which were afterwards redeemed by the Receiver by the payment of said indebtedness.

21. Capital stock and dividend certificates of the Erie Railway Company.

Prior to 1872, the Erie Company had acquired $7,475 of its own preferred capital stock, and it owned the same at the time of the appointment of the Receiver, except that it had pledged $5,800 of the same as collateral security for its indebtedness to the Pennsylvania Coal Company, which

stock was afterwards redeemed by the Receiver by the payment of said indebtedness. Subsequently, and in October, 1877, the Receiver sold $65 of this stock, at its market value at that time ($16.90).

The market value of this stock, as testified to on the reference, was $2,223.

The Erie Co. acquired in 1872 $39,549 of what is known as the preferred stock dividend certificates of the Erie Railway Company.

In 1870 or 1871, during Gould's administration, a dividend was declared on Erie preferred stock, payable in certificates of indebtedness, of which the above were a part. The greater portion of these certificates were received by the Erie Company from Mr. Gould in his first settlement in 1872, as a part of the restitution fund; a smaller portion, and the remainder, were purchased by the Erie Company prior to 1872. All these certificates were estimated as valueless by competent testimony.

The Erie Company acquired in November, 1874, $200 of its own common stock, the value of which was estimated on the reference at $25.

22. Mortgage bonds of the Northern Central Railway Company and capital stock of the Southern Central Railroad Company.

The first of the above companies is a corporation that has built a railroad that connects with the Erie Railway at Elmira, N. Y. In the final settlement with Mr. Gould in February, 1876, Mr. Gould transferred and delivered to the Receiver $350,000 of the 7 per cent. income bonds of this company. In March, 1876, the Receiver disposed of these bonds by exchanging the same for the 5 per cent. 2d mortgage bonds of the same company, and for the same amount. The value of these bonds is about 40 per cent. of their par value, or $140,000. This exchange of bonds made by the Receiver was most beneficial for the estate, as the Receiver obtained bonds secured by a mortgage on the real estate of the company, in place of the income bonds.

The Southern Central Railroad connects with the Erie Railway at Owego, N. Y. The Erie Company acquired $89,900 of its capital stock in

1873, and the same was in the possession of the Receiver May 31st, 1878. This capital stock is of no value.

23. Capital stock of the Jefferson Car Company, and capital stock of the Union Car Company.

These two car companies were organized in the interests of the Erie Company, and as auxiliary thereto, and by the action of the officers and directors of the Erie Company during the Gould and Fisk administration, and doubtless all of the moneys used and required to be used by these companies in their business were furnished and advanced directly or indirectly from the Erie treasury. In the case of the Jefferson Car Company, it appears that the Erie Company owned all of its capital stock prior to 1873. Gould delivered up $178,400 of the stock to the Erie Company in what is called the restitution fund, and one Archer, surrendered up $100,000 more. There was a contract existing between this company and the Erie Company, by the terms of which Erie had rented about 1500 coal cars for a period of years at a certain rent, which Erie Company failed to pay, and the Jefferson Company had recovered judgment against the Erie Company on this contract for the sum of $179,879.45. The Receiver, under the diection of the Supreme Court, concluded an arrangement with the Jefferson Company in July, 1875, by which he bought these cars at a low price and cancelled the said contract, and paid and satisfied the said judgment and surrendered to the car company all of the said capital stock, and the cars so bought by the Receiver were added to the rolling stock of the Erie Railway.

In the case of the Union Car Company, it was organized as a corporation about 1870, with a capital stock of $500,000, of which $330,500 only, was issued by the company, and that was issued to the Erie Company. The company owned a quantity of grain cars, and in February, 1875, the Erie Company assumed to transfer these cars to the Erie equipment account and the rolling stock thereof, on the grounds that no person or cor-

poration other than the Erie Company had any interest in the car company or property; and that the cars were in fact and law the property of the Erie Company. The said capital stock remained in the possession of the Erie Company without any cancellation, but the Directors thereof, at the time of the transfer of the said property to the equipment account, ordered said stock to be written off or cancelled as an asset of the company.

24. Capital stock of the International Bridge Company.

This company was organized to build the International Railroad Bridge, across the Niagara River at or near Buffalo, N. Y., connecting the Canadian railroads, with the Erie Railway at Black Rock. The Erie Company being much interested in this enterprise, subscribed for 828 shares of this stock and paid 5 per cent. thereon, amounting to $4,140. In November, 1876, the Receiver sold the same for $4,140.

25. Capital stock of the United States Express Company.

The Receiver acquired this stock February 7, 1877, and he received it from Gould, in the final settlement with him, as a part of the restitution fund. The market value of this stock in June, 1878, was 48 per cent., or about $240,000.

26. Capital stock of the United States Towboat Company.

This was a company, or a corporation, organized for the purpose of towing in and about the harbor of New York. The Erie Company took, by subscription, or acquired by purchase, $7,500 of this stock. The Receiver sold this stock in July, 1875, accepting in payment thereof one steamboat valued at $2,225, and the extinguishment of a debt of the Erie Company due to the Towboat Company, $2,249.18, and in cash $1,533.57.

Total amount thus received for this stock by the Receiver, as above stated, $6,057.75.

27. Capital stock of the Pavonia Ferry Company.

The Attorney-General claimed, in his list of securities furnished to the Referee on the submission of the case, of the existence of 990 shares of this capital stock in the possession of the Receiver, and the same has been stated in said schedule (Exhibit M).

There were no testimony or proofs offered by either party, or taken by me, in regard to the existence of any such company or corporation as The Pavonia Ferry Company, or in regard to the existence of any capital stock of that name or description. The only evidence bearing upon the subject is the fact that, in the receipt given by the New York, Lake Erie and Westen Railroad Company to Hugh J. Jewett, Receiver (a copy of which receipt appears in said Appendix as No. 28 of Exhibit H, p. 52), there appears in the list of stocks of companies held by said Receiver, the words Pavonia Ferry Company, and opposite thereto the figures 990, with inverted commas, referring to the word shares above; and in another document introduced in evidence, a copy of which appears in said Appendix as No. 10 of Exhibit L, commencing on the 108th page thereof, there appears under the list of stock held by said Receiver the following entry: "Pavonia Ferry Company, 990 shares."

In contradiction to this testimony, I find the following conclusion of fact, deduced from the petition of said Receiver and the order of this Court, entered in the said two foreclosure actions September 6, 1877, to which reference is hereby made, namely: That since 1859, to and until September, 1877, the Erie Company had owned a complete and extensive fleet of ferry boats, with the appurtenances thereunto belonging, including bridges, floats, ferry-houses and fixtures, at Chambers Street, New York City, and Long Dock, Jersey City, and the same had been maintained and operated for the purposes of a ferry, by said Erie Company, for its railway between New York and New Jersey; that it had operated the same under various ferry leases from the City of New York.

28. Capital stock Pennsylvania Transport Company.

As a part of the assets acquired by the Erie Company in 1873 from Jay Gould, was $450,000 of the stock of the above named company. It was a corporation of Pennsylvania owning about fifty miles of pipe line, for the transportation of oil, and all of its property was mortgaged far beyond its value. The company has no business and the stock is worthless.

29. Capital stock of the Brooks Locomotive Works.

In the settlement of the Erie Company with Gould the Erie Company acquired $99,000 of this capital stock. In the settlement made by the Receiver with the estate of James Fisk, in March, 1876, the Receiver acquired $99,000 more of this stock.

Undoubtedly, all this stock belonged to the Erie Company when it was first issued. The Brooks Locomotive Works is a corporation of the State of New York, engaged in the manufacture of locomotives and other machinery for the use of railroads. It had leased its shops at Dunkirk, New York, from the Erie Company. It also had a contract with the Erie Company for the manufacture and delivery to the latter company of twenty-five locomotives each year. The Erie Company had failed to fulfill this contract for a term of years, and the Brooks Works claimed damages to a large amount for the breach of said contract. There were also existing claims between the two conpanies arising out of the use and occupation of the shops at Dunkirk. In June, 1876, the Receiver, in accordance with the approval and direction of this Honorable Court, settled and arranged all matters of difference between the Brooks Works and the Erie Company, by the terms of which, the Brooks Company cancelled said contract for the construction of locomotives, and released the damages claimed by it for the non-fulfillment of the same; and also terminated said lease and released the shops to the Erie Company. In

consideration of which, the Receiver transferred and delivered all this capital stock to the Brooks Locomotive Works.

30. Capital stock of Compressed Air Safety Brake Company.

This company was organized to construct air brakes for railroad cars, with a capital stock of $1,000,000. In the settlement with Gould in 1872, Gould restored $30,500 of this stock, which was then, and has been ever since, and is now, completely valueless.

31. Capital stock of the Harbor Wrecking Company.

This corporation was organized for wrecking purposes in New York Harbor, in 1869, with a capital stock of $50,000. The Erie Company subscribed for and received in March, 1869, $2,000 of this stock. Afterwards the company failed, and the stock became and is now valueless.

32. Preferred capital stock of the Reno Company.

This is a Pennsylvania corporation, with a capital stock of $500,000. The Erie Company acquired in 1868 $5,123 of the same. The stock is estimated to be worth about 50 per cent. of the par value of the same, or $2,500.

33. Bonds of the New York and Boston Express Company.

This company was organized in 1870 with a capital stock of $1,000,000. The Erie Company acquired of these bonds, in 1870, $170,000. These bonds are all that were ever issued by the company, but the company failed and was sold out, and these bonds became valueless. In January, 1875, the Erie Board of Directors ordered these bonds to be written off from the assets of the Erie Company as valueless.

34. Bonds of the Mariposa Company.

This company was a mining corporation in the Northwest, and in 1871

the Erie Company acquired $1,000 of its bonds. These bonds are valueless.

35. Capital stock of the New York and Pennsylvania Blue Stone Company.

In the settlement with Gould in 1873 the Erie Company acquired $15,000 of this capital stock. It was a company that was organized to quarry blue stone at Pond Eddy. The company has failed and been sold out, and the bonds are valueless.

36. Bonds of the Lamont Mining and Railroad Company.

These bonds, $30,000 in amount, were acquired by the Erie Railway in 1870. It was a Pennsylvania corporation organized for mining and railroad purposes, but it never had any practical existence, nor did its stock or bonds ever possess any real value. These bonds are and always have been valueless.

37. Capital stock of the Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company; Western Extension Certificates of the Atlantic and Great Western Railroad Company.

The Erie Company acquired in 1874 11,477 shares of the above stock, of the par value of $100 a share, amounting to $1,147,700, from James McHenry, of London, under the following circumstances:

McHenry had borrowed from the firms of Plume & Van Emburg, and Moran Bros., of New York, quite a large amount of money, depositing with said firms, as collateral security for the payment of his indebtedness, the above named 11,477 shares of the Cleveland, Columbus, Cincinnati and Indianapolis stock. From time to time the said firms carrying this stock and indebtedness for McHenry, required payments to be made on account thereof, and at the request of McHenry, and to enable him to meet such requisitions, the Erie Company advanced, at one time, $75,000, at another time $15,000, and at another, $20,000; in all $110,000. After-

wards these firms required the payment of the full amount of the indebtedness of the said McHenry, and gave him notice that if payment was not made the stock would be sold, and the proceeds applied on his account. In the meantime the stock had depreciated in value, and the Erie Company feared that a sale would result in a loss of the entire amount that the Erie Company had already advanced for McHenry. Therefore the Board of Directors of the Erie Company authorized and directed an agreement to be made with McHenry, by the terms of which the Erie Company should advance the entire amount then due from McHenry to Plume & Van Emburgh, and Moran Bros., and take a transfer of the said stock from said firms, and hold the same as collateral security for the payment of the full amount of moneys and interest thus advanced from time to time by the Erie Company, for and on account of said McHenry. This agreement was executed in October, 1874, and the Erie Company paid said indebtedness of McHenry, and acquired said stock. The aggregate amount of the advances made by the Erie Company for McHenry in 1874, for which it took and held the said 11,477 shares of stock as collateral, was the sum of $681,095.77. The debt thus contracted is still due from McHenry, and the Receiver holds the said stock as collateral security for the payment of the same.

The Erie Company in the fall of 1874 acquired 2,766 shares of this capital stock, of the par value of $276,600, and 1,313 Western Extension certificates, of £100 each, of the Atlantic and Great Western Railroad Company, amounting in the aggregate in par value to $656,500, under the following circumstances:

The Erie Co. authorized one Mr. Gray to go to Europe, and to examine into and try to settle the then existing controversies between the Erie Company and the said McHenry and the London Banking Association and any other persons who had become interested in the affairs of the Erie Company through them. Mr. Gray went to London upon this authority and for this purpose. McHenry and the London Banking Association claimed

that Mr. Gray made a settlement with them; Mr. Gray denied that any settlement was made, but asserted that he received the said 2,766 of capital stock, and the said Atlantic and Great Western extension certificates from McHenry and the London Banking Association, to be delivered to and held by the Erie Company, subject to any settlement which might thereafter be made between the Erie Company and the said McHenry and the Banking Association. Mr. Gray delivered the stock and certificates to the Erie Company, with the assertion above stated upon his part; and said stock was added to the 11,477 shares of the same stock, heretofore described, and all of the same were entered upon the security book of the Erie Company as being held as collateral security; and all dividends or payments heretofore received from the said 2,766 shares of stock, and from said certificates, have been entered upon the petty ledger of the Treasurer of the Erie Company or the Receiver, to the credit of "the London Banking Association, James McHenry, and whom it may concern."

The Erie Company paid nothing for this last described 2,766 shares delivered to it by Mr. Gray, nor for the said certificates, unless the settlement claimed by McHenry shall be sustained in the litigation now pending in London between the Erie Company and said McHenry and the London Banking Association.

38. Capital stock of the New York and New Jersey Provision Dealers Association.

This association was formed to construct an abattoir for killing and selling stock. The Erie Company acquired $20,000 of this stock in December, 1874, as collateral security for the payment by said association of a freight account. The indebtedness of said association to the Erie Company, for the payment of which this stock is held as collateral security, amounts to the sum of $20,063. The value of said stock was not estimated or testified to. The amount of $1,350 of the said indebtedness of the association accrued after the appointment of the Receiver.

39. Atlantic and Great Western Railroad Company.

First Mortgage Ohio Division Currency Coupon	$76,951
Second Mortgage Gold Coupons	83,800
Total	$160,811

These coupons were acquired by the Erie Railway prior to the Receivership, as collateral security for advances made by the Erie Company to the Atlantic and Great Western Company, on a special loan account. No settlement has ever been made between the two companies in regard to the payment of these advances, and the Receiver has continued to hold the same.

And I find, as a conclusion of fact, based upon the foregoing material facts, established by said testimony and proofs, that the value of all the foregoing securities, and the amount of interest of the Erie Company in and to the same, amounts to about the sum of $5,000,000, and does not exceed that amount.

Sixth.—And I do further find the following material facts to be established by said testimony and proofs, of and concerning divers accounts on the books of the Erie Railway Company, against individuals and corporations, being those accounts particularly specified by the Attorney-General, and appearing under the letter "E" in the said schedule (Exhibit M).

1. James McHenry	$2,190,354.29
London Banking Association	1,141,951.95

These accounts contain claims against McHenry and the London Banking Association for the proceeds of the sale of the second consolidated bonds of the Erie Company. These claims are now in litigation, pending before the courts in England, and the amount and value of the accounts depend very much upon the result of said litigation. In the consideration of a portion of the capital stock of the Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company, and the extension certificates of the

Atlantic and Great Western Railroad Company, under the foregoing fifth subdivision hereof, it appears that those securities are held as collateral security for the payment of these claims when settled or liquidated.

2. Claims in Suspense Account..... $1,542,251.95

There is an account upon the books of the Erie Company under this name, which is made up of claims against individuals and companies in favor of the Erie Company, which are considered doubtful and uncertain as to amount or value. Claims of this character are thrown into this account for the purpose of preserving a record or account or the same.

On the 31st day of May, 1878, the aggregate amount of this suspense account was $1,542,251.95.

Among the items of this account is a charge or claim against Bischoffsheim and Goldsmith, of London, to the amount of $400,000 in gold. This claim is now in litigation before the courts in London. The Erie Company claims to recover this amount of said firm for moneys belonging to the Erie Company that said firm had wrongfully retained in their hands. There was no testimony given upon the reference as to any other item of this suspense account.

3. Atlantic and Great Western Railroad Company..... $595,718.72

No testimony or proofs were offered in regard to this account beyond the fact that this amount appeared on the books of the Erie Company as an indebtedness in its favor.

4. Hillside Coal and Iron Company..... $1,432,226.73
   Northwestern Mining and Exchange Company 398,247.44
   Towanda Coal Company..... 50,155.88

The only testimony and proofs in regard to the indebtedness of these coal companies have been considered under the foregoing fourth subdivision. These accounts represent the advances therein stated.

5. Delaware and Hudson Canal Company $28,206.41

No testimony or proofs were offered in regard to this account, beyond the fact of the amount appearing on the books of the Erie Company as a claim in its favor.

6. Erie International Railway Company..... $213,964.19
   Suspension Bridge and Erie Junction Railroad Company 302,740.80

No testimony or proofs were given in regard to these accounts or the items thereof. These amounts were undoubtedly expended by the Erie Company in the building of the railroads of the above companies, and are represented by the capital stock of said companies owned by the Erie Company, which have been fully considered in the foregoing fifth subdivision of this report.

Seventh.—And I do further find the following material facts to be established by said testimony and proofs, in regard to the accounts standing on the Receiver's books May 31, 1878, in favor of divers individuals and companies, and against the said Receiver, and in regard to amounts, against divers individuals and companies, and in favor of said Receiver:

The counsel for the plaintiff, on the 27th of December, 1878, filed in evidence, before the Referee, two statements or accounts, which were respectively marked as Nos. 25 and 26 (copies appear in said Appendix on pp. 48 and 49), and established the fact by the testimony of the Auditor, Mr. Little, that said statements contain the amounts due to individuals and companies by the Receiver, May 31, 1878, and also the amounts due from individuals and companies to the Receiver, at the same date.

The first of these statements (No. 25 of Exhibit H, p. 48 of Appendix) shows that the aggregate amount due to individuals and companies on the 31st day of May, 1878, was the sum of $4,131,496; and the second of said statements (No. 26 of Exhibit H, p. 49 of Appendix) shows that the aggregate amount due to the Receiver from individuals

and companies at said date, was the sum of $3,201,825.21. No parol testimony was given in regard to the first statement, but in regard to each item of the second statement (No. 26), I find that the following facts were established, namely:

1. New York and Fort Lee Railroad..... $177.29

This account is for an amount of repairs placed upon that road by the Receiver, which he holds against the trackage or rent thereof.

2. Northern Railroad of New Jersey (Construction)..... $1,370,060.00

This is an account for improvements placed upon this railroad by the Receiver.

3. Bergen County Railroad (Construction)..... $171.36

This is the amount of an advance made by the Receiver to this road for construction purposes.

4. Bills receivable $29,801.16

This is the amount of several bills of divers parties described in said No. 26, Exhibit H.

5. Transportation remittances..... $277,367.54

This account represents money due from agents, to be credited to their account when received.

6. Avon, Geneseo, and Mount Morris Railroad, rent..... $816.00

This item represents an amount of rent paid to said company in advance of the time when it became due.

7. Northern Railroad of New Jersey $15,337.11

This amount was claimed by said Receiver to be the balance due him by said company.

8. New Jersey and New York Railroad Receivers $7,229.86

This amount represents the balance claimed by the Receiver to be due to him.

9. Great Western Railway of Canada..... $5,033.61

This amount is a balance claimed by the Receiver to be due him.

10. Walkill Valley Railroad (Trustees 2d mortgage bonds).. $45,497.82

11. Walkill Valley Railroad (Trustees 1st mortgage bonds). 4,489.07

Above amounts represent the sums claimed by said Receiver to be due him from said Trustees for traffic balances.

12. Hillside Coal and Iron Company, advances..... $473,088.73

Northwestern Mining and Exchange Company, advances.. 454,153.64

These accounts represent the advances made by the Receiver to said companies. (These have been heretofore considered.)

13. Western Union Telegraph Company..... $8,179.05

This account represents a balance due the Receiver from said company for the use of the Erie telegraph lines.

14. United States Post Office Department..... $33,649.15

The Receiver claims this amount as a balance due to him for transportation of mails.

15. Blossburgh Coal Company..... $5,464.84

This amount represents a balance claimed by the Receiver for the transportation of coal.

16. J. S. Morgan & Co., London..... $399.21

This is a balance claimed by the Receiver of money deposited with them for the payment of coupons or other expenses.

17. Thomas W. Powell, London $7.50

This is a balance claimed by Receiver.

18. Ashurst, Morris & Co..... ..... $10,000.00

This amount represents a balance to be accounted for by them, arising out of the legal proceedings in London.

19. English Court of Chancery..... $7,500

Same as above.

20. Commercial Express, advances..... $2,000

This claim represents an amount claimed by the Receiver for advances made to said company to enable it to carry on its business.

21. Blossburgh Coal Association..... $13,054.23

The Receiver claims this amount for transportation.

22. W. B. Shattuc, Agent, Erie & Chicago Line, advances..... $500

The Receiver claims the above amount for advances made to said Shattuc, to enable him to carry on the business of said line.

23. Advances to Reconstruction Trustees, London..... $800 $\frac{21}{100}$

This claim represents an amount of advances to be accounted for by said trustees.

24. V. L. Lary, Receiver New Jersey & New York Railroad Company..... $58 $\frac{29}{100}$

This amount represents the amount claimed by the Receiver to be due him.

25. Delaware & Hudson Canal Company..... $315,000

This is an unsettled claim of the Receiver for an amount retained by said Company for interest on Boston, Hartford, and Erie Bonds.

26. New York and New Jersey Provision Dealers' Association.. $1,350

This amount is for a balance of account claimed by the Receiver to be due him.

27. Duncan, Sherman & Co..... $232 $\frac{58}{100}$

Receiver claims this amount as a balance of account due him, May 31st, 1878.

28. C. C. Winans..... $100

This amount represents an advance made to him to pay certain expenses for which he is to account.

29. Suspense Account U. S. Post-office Department..... $337,172.52

The Receiver claims this amount to be due him, but the same is contested by the said Post-office Department.

30. Thomas Maguire, Agent, San Francisco..... $254

This is a claim for a balance in the hands of said agent, May 31st, 1878.

31. Foreign Roads, Freight Ledger..... $10,669 $\frac{50}{100}$

This amount is for freight balances due by foreign roads, May 31st, 1878.

32. Foreign Roads, Passenger Ledger..... $16,739 $\frac{51}{100}$

This amount is for passenger balances due by foreign roads, May 31, 1878.

33. Foreign Roads, Car Service Ledger..... $10,289 $\frac{87}{100}$

This amount is for car service balance due by foreign roads, May 31, 1878.

34. Freight Agents..... $746,684.50

This amount is for balance due by Freight Agents, May 31, 1878.

35. Passenger Agents and Conductors..... $95,071.74

This amount is for balance due by them, May 31, 1878.

36. Individuals and Companies..... $272,114 $\frac{42}{100}$

This amount is for balance due by Individuals and Companies, May 31, 1878.

Eighth.—And I do further report the following material facts to be established by said testimony and proofs in regard to the assets and property set forth in Exhibit M, and described under letters G, H, K, L, and under the general Subdivision III. thereof, namely:

1. Under letter G, executory contracts between the Erie Railway Company or the Receiver with individuals and corporations. No testimony or proofs were offered by any party in regard to said executory contracts claimed by the Attorney-General, and no specification or description of the same was made before the Referee, except as hereinafter mentioned. In the report of sale of the property under said mortgage to this Honorable Court by Mr. Curtis, Referee, there appears a descriptive list of certain executory contracts stated in said report, under the head and title of "*Executory Contracts of the Erie Railway Company*," and, under another

head and title, "*Executory Contracts of the Receiver*," and said report and said lists thereof contains all the testimony and proofs on this subject, and reference is hereby made to the same (see No. 10 of Exhibit L, in said Appendix, commencing on the 108th page thereof).

2. Under letter H of said schedule "Exhibit M," under the head of "Patent Rights Owned by the Erie Railway Company," &c., there appears a list of patent rights to which reference is hereby made. There was no testimony or proof offered by any party in regard to said patent rights, excepting that there appears in said report of sale (see page 124 of said Appendix) a descriptive list of patent rights that probably includes the patent rights claimed by the Attorney-General.

3. Under letter K, the Attorney-General states and claims that the amount of cash received by the Receiver from the Erie Railway Company, May 26th, 1875—June 15th, 1875, was the sum of $561,096.59, and that the amount of cash in the hands of the Receiver May 31, 1878, was the sum of $346,021.51.

I do find and report that the actual amount of cash received by the Receiver from the Erie Railway Company May 26th, 1875, was the sum of $52,495.41, and that the amount of cash in the possession of the Receiver May 31st, 1878, was the sum of $346,021.51.

4. Under letter L, the Attorney-General claims all rents and moneys received by the Receiver on property since June 1st, 1878. No specification in regard to these moneys and rents were set forth by the Attorney-General, and there were no testimony or proofs offered or especially referred to by any party in regard to this subject. Some proofs in regard thereto may appear from the current accounts of the Receiver since said June 1st, 1878, heretofore referred to, which have been reported to, filed with, approved by, and which are now in the possession of this Honorable Court,

and to which reference can be made by either party under the stipulations made in this reference.

And upon the foregoing statements contained in the Third, Fourth, Fifth, Sixth, Seventh and Eighth general heads of this Report, of the material facts established by said testimony and proofs in regard to the property described in said Schedule M, and its acquisition by the Erie Company, I do find the following general conclusions of law and fact, in reference to the same:

1. That all of the said property was lawfully acquired and held by the Erie Railway Company, for actual and necessary railroad uses and purposes, under its charter, and the rights and franchises thereof, and in case of purchase, the same was purchased by said Erie Company, or the said Receiver, with moneys obtained from the rents, tolls, and income of the mortgaged property, or from moneys realized from the sale of the bonds secured by said mortgage.

2. That all of the said described capital stocks and bonds of the several Railroad, Steamboat, Coal and other companies, that are or were corporations of the States of New York, Pennsylvania or New Jersey, as heretofore described, were acquired by the Erie Company as muniments of title to the real and personal property and the rights and franchises of said corporations, and for the purpose of owning, possessing and managing said property and exercising the rights and franchises of said corporations under the charter of said Erie Railway Company, and subsidiary and appurtenant thereto.

3. That all the said described claims and accounts originated and arose from the business and business affairs of said Erie Company, lawfully transacted under and by virtue of its incorporate rights and franchises, and were the legitimate and lawful result of the same.

4. And if it shall be held by this Court, under the circumstances of this case, and having due regard to the relation which all this property sustained to the Erie Company and its railway and other property mortgaged, that this property is to be regarded as *subsidiary and appurtenant to said mortgaged property*, then I find and report as a general conclusion of law and fact, that all of said property and every part thereof was covered by and subject to the lien of said mortgage, and was embraced in the general and particular words of description and conveyance in the said mortgage.

Ninth.—The said Hugh J. Jewett was appointed Receiver on the 26th day of May, 1875, in this action, and by the subsequent orders therein, and in the other two actions, his receivership, and all his powers and duties therein, extended over the rights and interests of the parties in the aforesaid two foreclosure actions, and, in point of law and fact, the said receivership in all of the said actions commenced on the said 26th day of May, 1875. The said action wherein J. C. Bancroft Davis is plaintiff having been discontinued, it is only the rights and interests of the parties to this action, and the parties to the action of foreclosure in which said Trust Company is plaintiff, and their relations to each other, that are to be considered in this reference.

The said Hugh J. Jewett, as such Receiver, kept only one set or class of accounts, and those related to all of the estate or property of the said Erie Railway Company that came into his possession, without reference to any separate or diverse interests.

This action was brought for a dissolution of the Erie Railway Company as an insolvent corporation under the laws of the State of New York, and embraced within its purview the marshalling of its property and assets, the ascertainment of the amount and character of its debts and liabilities, the order and priority and the extent of the lien of the same, the sale

and conversion of its property and assets into money, and the distribution of the same, according to law, among its creditors.

The accounts and proceedings of said Receiver, including all his receipts and disbursements, and the manner and form of doing the business of said Receivership, have been examined and approved by this Court in this and the said foreclosure actions, to and including the month of June, 1879, and no question arises, nor is any issue made, in regard to the propriety and legality of all his proceedings, as Receiver, to the date of this report.

The receipts of said Receiver, from the 26th day of May, 1875, to the thirty-first day of May, 1878, both dates inclusive, may be divided into the following general classes:

1.—The money received by him on the 26th day of May, 1875, as a part of the assets of said Erie Company.

2.—The money received by him from the sale or disposal of any of the property or assets of said Erie Company that came into his possession on the same 26th day of May, 1875, as such Receiver.

3. The moneys received by him from the collection of any accounts, claims, or demands in favor of the Erie Railway Company against persons and corporations that existed prior to the 26th day of May, 1875, upon the books of said company or otherwise.

4.—The money derived from the income, or the rents and profits of the railway, and other property of the Erie Railway Company, in his possession as such Receiver, and carried on and managed by him during said receivership, including in this class the interest received by said Receiver on all securities acquired and held by him as Receiver, whether received by him on the 26th day of May, 1875, or acquired afterwards.

5.—The money obtained by him, from time to time, in the way of loans,

he being authorized, as Receiver, to borrow money for the purpose of said receivership.

I have found it impracticable to ascertain from the testimony and proofs the aggregate amount of receipts from each of the foregoing sources, so as to specifically state and report the same. The following facts, however, distinctly appear:

That the actual amount of moneys received by said Receiver as a portion of the assets of the Erie Railway Company, May 26, 1875, was the sum of $52,495.41. (I base this fact upon the testimony and proofs before me in the accounting of the Receiver for the months of May and June, 1875, and my report upon the same bearing date July 31, 1875, all of which were received as testimony and proofs in like accountings in this action, as also upon this reference, and are on file in this Court.)

That of the capital stocks, bonds, and other securities that came into said Receiver's possession May 26, 1875, the Receiver sold and disposed of a portion of the same; that the amount of money received from sales so made by him, from May 26, 1875, to June 1, 1878, was the sum of $62,360.47. The facts attending the sale and disposal of these securities are hereinafter stated in detail.

That from the 26th day of May, 1875, to and including the 31st day of May, 1878, he borrowed money for the purposes of said Receivership, as the necessities of the estate required, and repaid the same to the extent of his ability and means.

That the aggregate amount of moneys so borrowed upon his notes and certificates during said term was about the sum of $13,342,083.29, and the aggregate amount of said notes and certificates repaid by him during said time was about the sum of $11,970,710.32.

That on the 31st day of May, 1878, the said Receiver was indebted on account of said notes and certificates outstanding and unpaid in the aggregate sum of $1,371,372.97.

The disbursements of said Receiver during said period consisted of the following general classes:

1.—The current expenditures incident to the management and operation of the Erie Railway and all its branches, and the other property and estate of said Erie Railway Company that were the principal subject-matters of the said receivership, including the payment of the principal and interest of moneys borrowed by said Receiver from time to time.

2.—Payments made for and on account of the indebtedness of the Erie Railway Company that existed at the time of the appointment of the Receiver, as also the indebtedness of said Erie Company subsequently accruing, and secured by prior liens on the property of the estate; all payments of this class were made under the order and by the direction of this Court, as appears by the several orders in this and the foreclosure actions heretofore described, which include the several orders of this Court approving of the accounts, vouchers, and proceedings of said Receiver in the premises.

3. Payments made for and on account of the purchase by the Receiver of the capital stock and bonds of corporations and other securities, under the orders and directions of this Honorable Court.

4. Payments for and on account of advances made from time to time by said Receiver, under the orders and by the authority and approval of this Honorable Court, to the Hillside Coal and Iron Company, and to the Northwestern Mining and Exchange Company.

5. Payments made for and on account of the purchase of property, motive power, and other rolling stock of the Erie Railroad, and necessary for its use and operation; and also on account of expenditures made by said Receiver in the purchase of additional real estate, rails, tracks, and other permanent improvements, appurtenances, and conveniences to said

railroad, and its branches, deemed necessary and proper by the said Receiver, and duly authorized or approved by this Honorable Court.

I have found it impracticable to ascertain from the testimony and proofs the aggregate amount of payments made under each of these general heads, so as to specifically state and report the same; yet I do find and state the following material facts established, in regard to specific payments made by said Receiver from the 26th day of May, 1875, to and including May 31, 1878:

That to and until the 1st day of June, 1878, the said Receiver conducted, managed, and operated the railroad and all other property of the said receivership, and received the income, rents, and profits of the same; and he also made all payments that were made on account of the said receivership to that time.

That the aggregate amount of payments made by said Receiver during said time, for and on account of the indebtedness of said Erie Company, as above stated, including interest on the same to the said 1st day of June, 1878, was about the sum of $10,867,326; of which the aggregate sum of $1,672,837.64 was indebtedness, for the payment of which the said Erie Company had pledged divers securities hereinafter fully described, and this portion of said indebtedness was paid by said Receiver, and the said securities redeemed thereby as directed by this Court as heretofore stated.

That the aggregate amount of payments made by said Receiver during said time for and on account of the purchase of the capital stock and bonds of corporations, and other securities, as above stated, was about the sum of $689,065.82, not including any interest on the same.

That the aggregate amount of payments made by said Receiver, on account of advances made to the Hillside Coal and Iron Company, and to the Northwestern Mining and Exchange Company, from the 26th day of May, 1875, to June 1, 1878, but not including any interest on the same, was about the sum of $927,242, heretofore fully stated in detail.

That the aggregate amount of payments made by said Receiver during said time, and as above stated, on account of real estate and other property, and of motive power, and other rolling stock, for the use and operation of the Erie Railroad, and on account of permanent improvements, appurtenances and conveniences thereto, including additional rails, tracks, &c., *and beyond mere necessary repairs, or operating expenses*, was about the sum of $2,189,936.63, and for like expenditures during said time, upon the Branch and leased lines of said Erie Company, including the construction of car hoists at Leavittsburg and Mansfield, Ohio, the aggregate sum of $126,633, or the total amount of $2,316,569.33.

That since the said first day of June, 1878, and to and including the date of this report, the said Receiver has continued Receiver to a limited extent, as defined and set forth in the said order of this Court, entered in said foreclosure action on the 3d day of May, 1878 (Appendix, page 150), and under the power and authority set forth in said order, he has continued to pay, satisfy, and discharge or adjust all outstanding indebtedness of said Receiver, and to adjust all outstanding accounts and transactions in anywise growing out of his receivership.

That on the 1st day of June, 1878, the said Receiver was indebted to divers persons and corporations, as Receiver, in about the sum of $2,760,123.03 for divers accounts and claims, liquidated and unliquidated, and in about the sum of $1,371,372.97, on account of his certificates of indebtedness outstanding and unpaid, as heretofore stated, or about the sum of $4,131,496, as the total amount of said Receiver's indebtedness on said June 1, 1878.

That the said New York, Lake Erie, and Western Railroad Company, as the assignee of said Messrs. Morgan, Welsh and Wells, had theretofore assumed and promised to pay the said indebtedness of said Receiver to the extent of two millions, as a part of the price and consideration of the purchase of said property at the said foreclosure sale under said judgment.

That at the same time divers persons and corporations were indebted

to said Receiver in divers sums for accounts, claims and demands, liquidated and unliquidated, and sufficient in value to pay and extinguish the said indebtedness of said Receiver, to that extent that the obligation and liability of the said The New York, Lake Erie and Western Railroad Company would fully meet and pay the remaining portion thereof.

That since the 1st day of June, 1878, and to and including the 30th day of June, 1879, the said Receiver has paid on account of such indebtedness to persons and corporations, above stated, the aggregate amount of $1,938,876, and he has paid on account of said certificates of indebtedness until only the amount of $200,000 remained outstanding and unpaid at the latter date.

That he has received the moneys to pay the same from the said New York, Lake Erie and Western Railroad Company, or from the said property and franchises, over which he retained power and authority for that purpose by virtue of said order of May 3d, 1878 (Appendix, page 150), and the transfer and delivery made by him to said last-named company, under the said last-named order.

That on the 30th day of June, 1879, the said Receiver had not fully and finally settled and adjusted all outstanding indebtedness, accounts and transactions arising out of his Receivership, in favor of, or against him as Receiver, but it appears from his books of account that he was still indebted to divers persons and corporations in about the aggregate amount of $2,192,619, yet it is impossible, or at least impracticable, to state from said testimony and proofs what amount of indebtedness or liability remains unadjusted, unliquidated and unpaid, at the date of this Report, for the payment of which the said New York, Lake Erie and Western Railroad Company is liable, as heretofore stated. The same will fully appear in my report of the accountings of the said Receiver that shall include the date of this report.

Tenth.—And I do also find, as a summary of some of the material facts established by said testimony and proofs, and heretofore reported, which I deem important as bearing upon the question of the rights and equities of The Farmers' Loan and Trust Company, the purchasers at the foreclosure sale of the mortgaged premises, or their assigns, *in or to any property or assets not covered by, or subject to the lien of said mortgage*, as follows:

The counsel representing the interest claiming such rights and equities, assert, as a conclusion of law, that the mortgagees were entitled to the income, rents and profits of the mortgaged property from the time of the appointment of the Receiver; and claim, as a conclusion of fact, that all, or the greater portion, of said income, rents and profits was diverted from them under the direction of this Court, and applied toward the payment of the debts and liabilities of the Erie Railway Company existing before the Receivership, and for other purposes in the general interest of the estate of the Erie Railway Company, and that such payments made by the Receiver from said income, rents and profits should be paid from the moneys that came into the Receiver's possession from the property that the Attorney-General claims was not covered by the mortgage.

The conclusion of law above stated in regard to the mortgagees being entitled to the income, rents and profits of the property covered by the mortgage was not seriously contested by the counsel of the Attorney-General, but the proposition in regard to the rights and equities of the mortgagees, the purchasers at the sale, or their agents, in and to any portion of the property not covered by the mortgage as claimed by the Attorney-General was contested, and the following material facts or summary of facts established by said testimony and proofs, are reported for the consideration of this Court, in regard to this question:

1. The said Receiver received from May 26, 1875, to June 1, 1878, divers moneys from the rent and interest of property, from the sale of property,

and from collections made from accounts and debts due to the Erie Railway Company at the time he was appointed Receiver, and now has on hand stocks and bonds and other securities, none of which, the Attorney-General claims, were covered by or subject to the lien of said mortgage, namely:

A.—The attorney-General claims the moneys paid to the Receiver on the 26th day of May 1875. I have heretofore found the amount of these moneys was the sum of.....	$52,495 48
B.—The Attorney-General also claims that the money derived from the sale of securities that came into the possession of the Receiver are of this class. I have heretofore found that the aggregate amount of these moneys was about the sum of.....	62,360 47
C.—The Attorney-General claims that certain bonds and other securities that came into the possession of the Receiver on the 26th day of May, 1875, and not sold by him, are of this class. These have been heretofore fully described, and I have found their value to be of the sum of.....	5,000,000 00
Total amount of these three claims of property....	$5,114,855 95

D.—The Attorney-General claims that the Receiver received, as interest on securities, for accounts and claims collected, during his Receivership, a large amount of money. In regard to the amount of this interest and collections, I have been unable to report or ascertain the same from the said testimony and proofs, with any degree of certainty or accuracy.

2. That from the aggregate amount of all the receipts of said Receiver, from all sources, from May 26, 1875, to June 1, 1878, which included the amount of his debts and liabilities at the last named date (which the New

York, Lake Erie and Western Railroad were liable to pay), he paid and expended during said time, under the direction and approval of this Court, beyond the necessary expenses and disbursements *consequent to the management and operation of the railway and other property of the Erie Railway Company covered by said mortgage*, certain amounts which were expended for other purposes and objects, under the direction of this Court, among which are the following, namely:

A.—For the debts and liabilities of the Erie Company, as heretofore stated, about the aggregate sum of.....	$10,867,326
B.—For permanent improvements and additions to said Erie Railway, main and branch lines, heretofore stated..	2,316,569
C.—For advances to the Hillside and North western Coal Companies, as heretofore described.....	927,242
Total amount of these disbursements and payments.	$14,111,137

And I find as a general conclusion of fact, based upon the foregoing facts, that the said Receiver has paid out and expended large sums of money, under the direction of this Court, that he received from the income, rents and profits of the mortgaged property, for the purposes above stated; and that the aggregate amount of the same far exceeds the aggregate amount of the moneys received by him, and realized by him, from the sale of property, and from the interest, rent and income of property, *not covered by the mortgage, as claimed by the Attorney-General*, added to the value of said stocks, bonds and securities heretofore described.

Eleventh.—And I further report that the following material facts were established by said testimony and proofs in regard to what is known as the plan or scheme of reconstruction and reorganization of the Erie Railway Company, that was entered into and carried into effect by the action of

the owners and holders of the capital stock, and of the first and second consolidated mortgage bonds of the Erie Railway Company, with the aid of this Honorable Court.

That in September, 1875, a majority in amount and number of the capital stock, andd of the first and second consolidated mortgage bonds of the Erie Railway Company were owned and held in Great Britain, and during that year a large number of said share and bond holders met in London and selected and appointed a committee, of whom Sir Edward Watkin was chairman, to take the matters of the reconstruction and reorganization of the Erie Railway Company into consideration, and to advise and consult with like stockholders and bondholders in the United States, and with the directors of the Erie Railway Company, and with said Receiver. The said committee visited New York and sought an interview with the said Receiver, and presented their views in regard to said reorganization. The said Receiver, on the 30th of September, 1875, in an application to this Honorable Court, entitled in this action, and in the said two foreclosure actions, stated the whole subject-matter as received from said committee, and asked the Court for appropriate instructions in the premises, and upon said application and on the 7th day of October, 1875, an order was entered in said three actions, by the terms of which the said Receiver was authorized to take such action, in a prudent and proper manner, not inconsistent with his general duty as Receiver, as he may deem advisable in the premises, to accomplish the purposes set forth in said application, to which application and order reference is hereby made.

That subsequently, and in June, 1876, for the purpose of promoting and advancing the said plan of reconstruction, the said committee requested the presence of said Receiver in London to advise and assist them in the premises, and the said Receiver, in his petition to this Court, entitled in said two foreclosure actions, submitted all the facts in the premises and asked further instructions from this Court, and by an order entered

in the said two foreclosure actions, on June 22d, 1875, the said Receiver was authorized to proceed to London and there remain for such time as he deemed necessary to accomplish the objects sought by the journey. (Copies of the said petition and order appear in the Appendix as No. 3 of Exhibit L, commencing on p. 68 of the same, to which reference is hereby made.) And the said Receiver did proceed to London, and did there act in concert with the said committee in perfecting the said plan of reorganization and reconstruction, and the action of the said Receiver and said committee in the premises fully appears in the petition of the Erie Railway Company, entitled in said two foreclosure actions, and verified and filed in this Court August 12th, 1876, and upon which an order was entered in said two foreclosure actions on August 12th, 1876, approving fully of the plan or scheme of reconstruction submitted, and of all that had been done by said Receiver in the premises, and authorizing said Receiver to aid, so far as he could consistently with his general duty as Receiver, in carrying such plan into effect. (A copy of said petition and order appears in said Appendix, being No. 6 of Exhibit L, commencing on page 81 of the same.)

In the negotiations of the said Receiver with said Committee, and in all his action in connection therewith, he represented the Erie Company as its President, and the Erie Company and all its creditors as Receiver, under the authority and instructions of this Honorable Court. A large majority, in number and value, of the owners and holders of shares of the capital stock, and of the first and second consolidated mortgage bonds of the Erie Railway Company, approved of and agreed to said plan or scheme for the reconstruction and reorganization of the Erie Company.

Of the $87,000,000, or thereabouts, of Erie capital stock held by shareholders, there remained only about $1,300,000 in value and number that did not agree to the same. Of the $16,656,000 of the 1st consolidated mortgage bonds there remained only $460,000, in value and number that did not agree to the same; and of the $24,400,000 of the 2d consolidated

mortgage bonds, there remained only about $220,000, in value and number that did not agree to the same.

The said Receiver, representing the Erie Company as aforesaid, did by his advice, influence and action, aid and contribute in perfecting and carrying into effect said plan of reorganization, to and until some time in the month of November, 1877. At or about the latter date, persons claiming to be owners and holders of bonds and shares of stock of the Erie Company, opposed the said plan of reconstruction, and commenced and prosecuted several actions in this Court, for the purpose of retarding and defeating the same, and from that time the said Receiver ceased to take any active part in the furtherance or completion of the said plan of reorganization.

At the time of the submission of this case, the said plan or scheme of reorganization, heretofore set forth, had been and was being carried out according to its provisions in due course, and all bonds to be issued under the said provisions were being issued, or would be thereafter issued.

I was requested by the counsel for the Attorney-General to find conclusions of fact and law upon this subject, substantially to the effect that the owners and holders of Erie Railway Company bonds, who became parties to this plan and scheme for the reconstruction and reorganization of The Erie Railway Company, and participated in its advantages, thereby forfeited all rights or claims as *bona fide* owners of the bonds of The Erie Railway Company that they might have possessed and enjoyed, and pressed for recognition, had they not united with their fellows in this plan of reconstruction and reorganization. I have been unable to view this subject in this light, nor can I realize that the action of the Erie bondholders, or stockholders, in this regard, and the execution of the said plan in all its details, have any relation or bearing upon the legal and equitable questions in this case, or can in any way affect the legal or equitable claims of the stockholders or bondholders of The Erie Railway Company, more than if such plan had never had an existence.

Twelfth and Lastly.—I have now found all the material and substantial facts, upon the questions referred to me by the order of the Court, which were made to appear distinctly and specifically by the character and form of the evidence. I have been requested by the counsel for the several parties to find several other matters claimed by them to have been established by the evidence. But I have not complied with their requests, for the reason that there was no evidence on the hearing before me directed specially to the establishment of such facts, so as to enable me to find specifically upon them, nor has my attention been called to any evidence warranting such findings; and in some cases such requests embraced questions of law and fact, and in the foregoing findings I have, with one or two slight exceptions, confined myself to the stating of facts alone, intending to embrace my views as to the questions of law upon the foregoing facts reported by me in my opinion.

I have not reported upon other matters referred to me in the said order of May 20, 1879, and submitted to me on the said 5th day of April, 1879, for lack of time to consider and report thereon, and also because I believed that the importance of the questions involved herein, made it expedient and proper that they should be considered and decided upon by this Court, separately, and disconnected from other matters that should in due course follow the same. For like reasons, I report no facts in regard to my services and compensation, in this reference; and beg leave to inform the Court in the premises, by petition or otherwise, before its final decision of the questions involved herein.

All of which is respectfully submitted.

Dated New York City, October 31, 1879.

JAMES C. SPENCER,
Referee.

Supreme Court,

NEW YORK COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

against

THE ERIE RAILWAY COMPANY and others,
Defendants.

Opinion of JAMES C. SPENCER, Referee, upon the material facts stated in his Report in the above entitled action, bearing date October 31st, 1879.

By the order of reference under which I have acted, I was required to "take testimony for the purpose of ascertaining what property or assets, "if any, the said Hugh J. Jewett, as Receiver in this action, held, acquired "or disposed of, not covered by or subject to the lien of the mortgage of "the Erie Railway Company to the Farmers' Loan and Trust Company, "which has been foreclosed, and if any such property has been disposed "of by said Receiver, what disposition has been made thereof, and also "what rights and equities, if any, the said Farmers' Loan and Trust Com-"pany, the purchasers at the foreclosure sale of the mortgaged premises, "or their assigns, had or have in or to such property or assets, or any part "or portion thereof, and that the said Referee report to this Court the

" testimony so taken by him, and the material facts which he shall deem " established by such testimony, with his opinion thereon, for the further " action of this Court."

The inquiry thus imposed upon me has brought in question a great amount and variety of property, and has led to the taking of very voluminous testimony.

The analyzing and digesting of so much matter has been a difficult and laborious task, covering a long period of time, and requiring careful examination and conscientious thought. And when once analyzed and digested the labor was not done: difficult and important questions of law then arose, which had to be passed upon in order to arrive at the conclusions called for by the order of reference. Having found the material facts which I deem established by the evidence, it now remains for me, in closing my labors, to submit my opinion upon those facts.

First in order, for my consideration, comes the direction of the Court that I " shall take testimony for the purpose of ascertaining what property " or assets, if any, the said Hugh J. Jewett, as Receiver in this action, ac- " quired, held, or disposed of, not covered by or subject to the lien of the " mortgage of the Erie Railway Company to the Farmers' Loan and Trust " Company." This renders it necessary to ascertain what property was " covered by or subject to the lien of the mortgage" in question. This being ascertained, if there was other property, that property, of course, was " not covered by or subject to the lien of the said mortgage," and that is the property sought to be ascertained by the reference.

The determination of this question depends upon the language of the description in the mortgage, and what intent is to be deduced from it. I will take up the description separately with reference to each class of property which is brought in question.

And, first, touching the leased roads. The description begins by naming the original main line of railway from Piermont on the Hudson to Lake Erie. At two or three points this line, for short distances, runs a little

over the border into Pennsylvania. But it is all described by itself as an entirety, and is no more referred to. Then certain branches in the State of New York which had been originally constructed by the Erie Railway Company, and were held as absolutely as the main line, are described. After this follows the clause, "and also all other railways belonging to "the party of the first part in the States of New York, Pennsylvania, and "New Jersey, or any of them." Then, after describing, in general and comprehensive terms, in the language usually employed to embrace railway properties, real and personal, it concludes as follows: "Also all the "estate, right, title, and interest, terms and remainder of terms, franchises, "privileges, and rights of action, of whatsoever nature, in law or in equity, "conveyed or assigned unto the New York and Erie Railroad Company, "or unto the Erie Railway Company, by the Union Railroad Company, "or by the Buffalo, New York and Erie Railroad Company, by the Buffalo, "Bradford and Pittsburgh Railroad Company, by the Rochester and Gen-"esee Valley Railroad Company, and by the Long Dock Company," one of which railroads was in New Jersey, one in Pennsylvania, and two were in New York. In this connection it should be stated, as a material fact in giving interpretation to the above portions of the description, that every piece of railroad which the Erie Railway Company had in its possession, and under its control, in New Jersey and Pennsylvania—and it had four in the former State and three in the latter—it held under lease, and every piece of railroad which it had in the State of New York, other than leased roads, had been previously described in the clause immediately following the description of the main line, but no leased road was specifically named till the insertion of that clause lastly above cited.

What then is the effect of the clause, "and also all other railways be-"longing to the party of the first part in the States of New York, Penn-"sylvania, and New Jersey, or any of them"? It must have a meaning. The rule of construction is, to give effect to every part of a deed when this is possible, and every word must be made to operate in some shape or

other (Broom's Leg. Max., 6th Am. Ed., 400). The Erie Railway Company had not, at the time, a solitary piece of railroad in either of the three States named, not previously expressly described, which was not leased road. Then this is a declaration in the instrument itself, that the Erie Railway Company regarded all the leased roads as "belonging" to it, and intended to embrace them in the mortgage. To hold otherwise would render the clause wholly nugatory, and this would be contrary to the settled canons of construction. The construction must be such as will preserve rather than destroy, (Broom's Leg. Max., as above). Why insert that clause if not intended to operate? It must have had a purpose and a meaning. An instrument of such importance, affecting such vast interests, must have been drawn with care and deliberation, and "futile dal-"liance" in the use of language cannot be presumed. This language gives the estimate and understanding of the mortgagor itself, of its relation to the railways in its possession, and in the character thus fixed, it mortgages all the leased roads.

And the leased roads did belong to the Erie Railway Company. Most, if not all, the leases were for the whole duration of the charters of the companies granting the leases, and in addition, in nearly every instance, the Erie Railway Company held the whole, or nearly that, of the capital stock of such companies; so it not only owned the companies, but was entitled to the possession and use of the roads for as long a time as they could last and be operated as railroads under the charters authorizing their construction. To every practical intent and purpose, therefore, they belonged to the Erie Railway Company.

In popular understanding, and by reasonable intendment, it is not necessary for a party to have the fee of lands to entitle him to say that they belong to him. If he have only a freehold interest, less than a fee, or a lease for years, the lands belong to him during the life or lives upon which the duration of the freehold depends or the time for which they are leased. And this language would be fully warranted, without qualifica-

tion, in mortgaging a great combined system of railways controlled and managed at the time, as a whole, by a single corporation executing such mortgage. Moreover, such interests are property, carrying with them the tangible and visible possession and use of the physical things out of which such interests grow, and the manifest intent of such a mortgage is to convey all the railway property of the mortgagor.

The fact that certain, but only a part, of the leased roads were afterwards expressly enumerated, does not exclude those which were not so enumerated, by any fair interpretation which can be adopted. The maxim that "*the express mention of one thing implies the exclusion of another*" is not a rigid, universal rule, subject to no qualifications or exceptions. The law is not thus unreasonable and so chargeable with injustice. Each case "depends upon the intention of the party as discoverable upon the face "of the instrument or of the transaction; thus, where *general words* are "used in a written instrument, it is necessary, in the first instance, to de-"termine whether those general words are intended to include other mat-"ters besides such as are specifically mentioned, or to be referable exclu-"sively to them; in which latter case only can the above maxim apply." (Broom's Leg. Max. as above, 481).

It is manifest on the face of the instrument that it was intended to mortgage other roads than those first described as the main line and certain of its branches in the State of New York, none of which were leased roads, and the few leased roads particularly mentioned in the concluding clause. Of the four principal leased roads in New Jersey, only one was named, and of the three in Pennsylvania, only one; leaving five out of seven of the roads in those States, which entered into the grand combination, which constituted the entire railroad system of the Erie Railway Company, not specifically named. The numbers and importance of the five not named make the conclusion irresistible that it was intended to embrace them in the general clause. It is patent on the face of the instrument that the intent was to include and cover all the railroad interests of the Erie

Railway Company. Then, applying the proper qualification to the above maxim, there is no doubt in my mind that it should be held that all the leased roads passed under the mortgage.

If anything not already stated were needed to support this position, it is to be found in the first amended and supplemental complaint of the plaintiff, subdivision 3, to be found at pages 188 and 189 of the Appendix, which presents a most cogent and convincing argument in favor of the interpretation which I have adopted. In the first place, it is there stated that "the main line of road at present owned and operated by the said "Erie Railway Company extends from Jersey City, in the State of New "Jersey, to Dunkirk, in the State of New York, a distance of 458.97 "miles, together with the various branches upon said main line. *In addi-* "*tion to this main line, and their branches, it possesses leases of and operates* "*various other railroads, all connecting with its own main line and operated in* "*connection therewith.*" It then refers to, and annexes as an exhibit, an enumeration and description of these several lines contained in a "State- "ment of Hugh J. Jewett, President of the Erie Railway Company," which embraces all these leased lines. Farther on, it states that "the "railroads *owned and operated* by the said Company in this and *adjoining* "States, are so numerous and extensive as to constitute, and they do con- "stitute, a very important part of the commercial system, not only of this "State, but of the United States." Every one of the roads "owned and "operated" by said company in the "*adjoining States*" was a *leased road.* Afterwards it sets forth that it is "of vital importance to the people of "this State" "that each and all of the said leases now held by the said "company should be preserved from forfeiture for non-payment of rent, "to which they are all subject, and that the *said leased roads should continue* "*to be operated in connection with, and as a part of, the said main line,* each of "the said leases being valuable and profitable, *and constituting an import-* "*ant link in, and part of, the system of roads of which they do respectively* "*form a part.* In addition to the reasons above stated, *all and singular,*

" *the leased railroads before mentioned are embraced in the mortgages herein-*
" *after particularly referred to*, and many of them constitute an important
" part of the mortgage security, and by a forfeiture thereof the mortgage
" creditors would sustain irreparable damage, contrary to equity and good
" conscience." The mortgage in question herein, constituted one of the mortgages thus "particularly referred to" in said complaint.

Thus stands the record. This pleading remains a part of the case, and is not only an admission, but a direct and express allegation on the part of the plaintiffs that all the leased roads are covered by the mortgages. This not only confirms the conclusion arrived at by me, but would seem to estop the plaintiff from raising the question on the reference, of the status of the property in question. Upon every ground, therefore, I hold that all the leased roads are covered by the mortgage in question, and passed by the foreclosure sale.

Next in order come up for consideration the coal lands, the corporations by which the legal title to the lands is nominally held, and the position and rights of the Erie Railway Company in connection therewith at the time of the execution of the mortgage in question. The portion of the description in the mortgage which covers these properties, if covered at all, is as follows: "Together with all the *lands*, tracks, lines, rails, bridges, ways,
" buildings, piers, wharves, structures, erections, fences, walls, fixtures,
" *franchises, privileges and rights of the said company*, and also all the
" locomotives, engines, tenders, cars, carriages, tools, machinery, manu-
" factured or unmanufactured materials, *coal, wood, and supplies of every*
" *kind belonging or appertaining to the party of the first part, and all the*
" *tolls, income, issues and profits arising out of the said property, and all*
" *rights to receive or recover the same.*"

To a large extent these coal lands were purchased, and for a time owned, by the Erie Railway Company. There is no good ground for contending that they were not purchased for a legitimate corporate purpose. They were purchased for the use and benefit of the company in conducting the

business for which it was chartered. It had as much right to purchase the lands from which to mine the coal for its use, as to purchase the coal from other companies which had mined it and had it for sale. Which it should do, was simply a question of economy, upon which the company had an absolute discretion. The intent and substance of the transaction must be considered, and it was in effect purchasing coal needed in its business. So, too, if in the process of mining this coal for its use, from time to time, it was at any time found that freights were slack, and that the company could not command coal carriage to the extent of the capacity of its rolling stock, it undoubtedly had the right to transport its own coal to market and sell it, in order to keep its engines and cars employed, and earn the utmost income to which the equipment of its roads was adequate. This would not be resorting, as a business, to the mining, transporting, and selling of coal, but adopting measures, as the necessity should arise, for keeping its rolling stock employed and earning all the income it could. It was simply a method of earning freight, and had no other end in view. This would be in the legitimate line of its business, and carrying out the objects of its creation. And had it been within its contemplation, when originally purchasing these coal lands, to provide for such a contingency, and had it, therefore, purchased more extensively on that account, it would only have been anticipating the future necessities of the road by timely investments when it may be presumed that they could be most advantageously made, making the company, to a certain degree, independent of chance and the will or favor of others for business, and securing and guarding its prosperity so far as human foresight would allow. To my mind such purchases were beneficial, and for legitimate corporate purposes, and are valid.

In furtherance of the same scheme, and to the same end, the Erie Railway Company bought up the entire stock of certain chartered coal companies, and became, in fact, the owner of said companies. Some of these companies it consolidated into one company, so that the companies thus consolidated ceased to exist as separate companies. All the stock of this

consolidated company was issued to, and has ever since been held by the Erie Railway Company, or by the Receiver. To this consolidated company the Erie Railway Company conveyed all the bituminous coal lands embraced in the various purchases which it had made. To one of said companies not merged in the consolidated company it conveyed all the anthracite coal lands which it held under said purchases. Then, at the date of the delivery of the mortgages, there were several nominal corporations in form holding the legal titles to all the coal lands which the Erie Railway had purchased. This whole arrangement was a scheme of the Erie Railway Company for placing these coal lands under its control and management, and was an agency or instrumentality for carrying on legitimate corporate business, and it, in fact, occupied those lands, and worked the mines thereon, as exclusively and as absolutely as though the corporations nominally holding title to them had no existence. And those lands were entered upon the books of the company, and were known in all its dealings and transactions concerning them, as the coal lands of the Erie Railway Company. All payments upon mortgages and charges upon them, and of expenses of every kind in connection with them, were made by that company. As matter of fact the Erie Railway Company had the sole charge and management of these coal lands, and bore all the burdens and took all the benefits incurred thereby and resulting therefrom, and it *recognized the existence* of those coal companies so far only as to take the necessary steps to *keep them in existence*, for what it deemed its own convenience and interest. It originally entered into the arrangement because it was advised by counsel in Pennsylvania that it could not take and hold title to the lands in Pennsylvania, but that they must be transferred to local corporations.

Now arises the question strenuously urged by the counsel for the plaintiffs as to the validity of this scheme in regard to the coal lands, and whether any interest in, connected with, or growing out of, these coal lands, or the corporations holding nominal title to them, passed under the

mortgage. It would be idle to deny that this is a grave and difficult question.

In attempting to arrive at its solution we must look at substance rather than form. It must be conceded that the Erie Railway Company had not a corporate right to engage in the business of dealing in the stocks of other corporations, or of buying up and managing other corporations as branches of its general, permanent business. Nor did it do this in reference to these stocks and corporations. It was no speculative enterprise, no general dealing, no scheme of making profits out of stocks, or from managing corporations. It did not deal in these stocks; it did not manage these corporations. It simply placed these coal lands in such position as it deemed desirable for making those lands available and contributory to the carrying on of its lawful corporate business, and worked the mines on those lands to that end, the same as it did before this arrangement was entered into, and made no use whatever of the stocks or the corporations except as a means to the carrying out of this scheme. To my mind the measure was reasonable and beneficial, and I cannot regard it as unlawful.

And as to the effect of the carrying out of the scheme upon the ownership of those lands, it is true that the legal title of the lands was nominally in those coal companies as artificial persons. But who owned these corporations? Did not the Erie Railway Company? It owned all the stock, and was the one sole corporator. According to my understanding the stockholders are the owners of a corporation. They are the corporators, and are not only the owners of the corporation, but, in substance and reality, are the corporation itself. True, it has a corporate name, and by that name it is known and must act. But it can act only through the agency and instrumentality of men. The stockholders create these agencies or instrumentalities by selecting and commissioning them to exercise the corporate powers. These are the managers of the corporation, whether called directors, trustees, or something else. They are the trus-

tees of the stockholders. It appears to me, then, that stockholders are much more than the mere holders of certificates of stock, which can be dealt in and transferred from party to party as bits of paper, or choses in action, or evidences of incorporeal rights. They make the holders of them the owners of the corporation, and really the corporation itself, and draw to and carry with them an interest in the corporate property. Perhaps that interest has not been clearly defined, but it must needs be that it is something substantial and real. Logically, and upon general principles, I think it makes them the equitable owners of the corporate property. But whether so or not, I have no doubt that by virtue of its owning all the stock, and being the one sole corporator of these coal companies, the Erie Railway Company had an interest in these corporations, their franchises and properties, capable of being mortgaged, if appropriate language were used to describe that interest, and a plain intent appears to mortgage it.

Beyond this, as constituting a clear equitable interest in the Erie Railway Company, which could be mortgaged, it should be borne in mind that that Company, for a long time before the mortgage to the Farmers' Loan and Trust Company was executed, was, and ever since has been, in actual possession of these coal lands by the express or tacit consent of the nominal corporations which held the legal title; that both before and since it has made large expenditures and valuable improvements upon those lands, and that it had paid large sums of money on the original purchase of all of those lands; that it paid heavy sums upon mortgages upon all the lands since the legal title became vested in the coal companies, and before the mortgage by the Erie Railway Company to The Farmers' Loan and Trust Company, and has paid other heavy sums upon those coal land mortgages since the execution of that mortgage. These things clearly constituted an equitable charge in favor of the Erie Railway upon those lands, for expenditures and improvements upon them, beyond the benefit derived from them, and an equitable right of subrogation under the coal land mortgages, upon which it has made such heavy payments.

Now arises the question—Does any part of the description in the mortgage in question cover the interest, whatever it may be called, of the Erie Railway Company directly in the coal lands, or indirectly resulting from its relations to the coal land corporations as they have been discussed? I think it had such an interest in the lands themselves, as would pass under the word "*lands*" alone. Then in another part of the description the words "*franchises, privileges, and rights of the said Company*" are used. There were beyond question, in connection with these coal lands and coal corporations, certain "*privileges and rights*" in the Erie Railway Company. These, whatever they were, must have passed under the mortgage, and if anything passed "all" these "*privileges and rights*" passed. If they did, then there is nothing left, in that connection, for administration for the benefit of the general creditors.

It will be observed that the general description contains the words, "*coal, wood, and supplies of every kind belonging or appertaining to the party of the first part.*" Although "coal and wood," as supplies, would ordinarily be held to refer to personal property only, still, in view of the fact that these coal lands were purchased solely on account of the coal beds which lay in them, and were intended, and kept on hand, mainly for the supply of coal for the consumption of the railroads of this company, and that wood, which must be presumed to be upon these lands, is another important railroad supply, I think it would not be an unnatural or forced construction to hold that the clause last cited covered this property.

As a question of construction and evidence of intention, it will be observed that "all" the "franchises" of the Erie Railway Company are embraced in this mortgage. Is it probable, when the company made so sweeping a description of railroad properties, interests and rights as is contained in the mortgage, and coupled with them "all" its "franchises," by which it was evidently intended that the mortgagees, and the purchasers under the mortgage, in case it came to a foreclosure and sale, should acquire all that was necessary or desirable in operating this great

railway system, would intentionally, or even by the omission of ordinary care and foresight, omit what was so essential to the economical and beneficial ownership and use of the property? This consideration is convincing evidence that it was intended, by the language of the description, to mortgage whatever rights and interests the Erie Railway Company had in these coal lands and coal companies. The same consideration will go to strengthen the position hereinabove taken in regard to the leased roads, and will apply with equal force to some of the property the status of which, will be hereinafter discussed.

But the counsel for the plaintiffs claim that the taking of a transfer of the stocks of these coal companies, and the acquiring of whatever interest in said coal companies would vest in the purchaser and holder of those stocks, was *ultra vires*, and that the Erie Railway Company had nothing growing out of these transactions which it could mortgage. I cannot, for the reasons hereinabove stated, regard the transactions as *ultra vires*. On the contrary, I am clear in my judgment that they were not. But, if it should be held that they were *ultra vires*, they having been consummated, and the stocks having been transferred to the Erie Railway Company, and being actually owned and held by it, and the company having become the sole corporator in these companies, and being in the actual possession of the coal lands, and the worker of the mines, and having paid large sums of money for and on account of them, it thereby acquired rights and interests which it could pass by mortgage, and those rights and interests were mortgaged, and have passed to, and are held by, the assigns of the purchasers under the mortgage (Parish *v.* Wheeler, 22 N. Y., 494).

In addition to its lines of railroad, and its rights and equities in the coal lands and companies, the relations of the Erie Railway Company to which, have been above considered, that company had, at the time the mortgage was executed and went into effect, a very large number of separate parcels of land, situate in the States of New York, New Jersey, and Pennsylvania, of great aggregate value, which lands the counsel for the plaintiffs contend were not covered by the mortgage.

The most valuable of this real estate is what is known as the Grand Opera House property, including the whole group of lots and buildings situate on Twenty-third and Twenty-fourth Streets, in the immediate vicinity of the Grand Opera House, in the City of New York. The bulk of this property was purchased prior to 1872, by Jay Gould and James Fisk, Jr., while they had the Erie Railway Company under their control, with the intention of appropriating it to the use of the Railway Company, and they occupied certain of the said buildings for the business offices of the company. They took title in their own names, and leased to the Company the parts of the premises used for offices at a high rent. After their official connection with the company ceased, and new men came into the management, it was discovered that they had made large payments out of the funds of the Erie Railway Company, on account of the purchase of this property, and that no payments had been made from any other source. Measures were at once taken by the company to get title to this property, as of equitable right, which led to its being voluntarily conveyed to the company in 1872. It was in evidence that it was acquired by the company for railroad purposes, and that it has been ever since held for such purposes. It has from time to time been contemplated by the company, and the scheme is still entertained, to build upon the land covered by the Grand Opera House, and the said other lands in its vicinity, a large passenger depot, to be connected with the New Jersey shore by a tunnel under the Hudson River, and the company has retained the property with the idea that this scheme may at some time become practicable, and that it will be the interest of those succeeding to the rights of the Erie Railway Company to carry it out. I think, therefore, that this property was a part of the railway property of the company at the time the mortgage was executed.

The company also owns, in the City of New York, thirty-three lots of ground, bounded by Twenty-second and Twenty-third Streets, and Eleventh and Thirteenth Avenues, and also wharf and bulkhead property

in front of those lots, on the Hudson River, which wharf and bulkhead property "is now, and has been for many years used as a freight and pas-"senger depot, and ferry of the company." The said thirty-three lots, with the exception of three on Twenty-fourth Street between Tenth and Eleventh Avenues, held under a lease which expires May 1, 1880, were acquired before the execution of the mortgage, "for the purpose of laying "tracks and building an uptown freight depot, and yards, for the com-"pany, in direct connection with the wharf and bulkhead in front of those "lots." This project has not yet been carried out, but considerable portions of those lots have been and are used for various objects in carrying on the business of the company, and they were all held for railway purposes when the mortgage was executed.

The company also has, in the City of New York, a block of ground bounded by West, Washington, Duane, and Reade Streets, held under lease from the City of New York, commencing in 1852 or 1853, and having yet some ten years to run. Upon this ground the company erected, soon after procuring the lease, buildings which, during most of the time, have been used for its general business offices. This was clearly held for railway purposes when the mortgage was executed.

In addition, and comprising all other interests in real estate in the City of New York, the company has divers leaseholds of piers which are used for freight, passenger, and ferry purposes.

There were also held by the Erie Railway Company at the time of the execution of the mortgage, numerous parcels of real estate in the State of New York, outside the City of New York, and in the States of New Jersey and Pennsylvania, situate alongside, or in the vicinity of, the tracks and depots of its various railroads covered by the mortgage, or in such proximity thereto as to render them available for its purposes, all of which, with a few exceptions, which will be hereinafter mentioned, were acquired, and have been ever since held, for such objects as come within the ordinary requirements of a railroad company, and for which such

acquisitions are usually and legitimately made, comprising depots, business offices, eating-houses, side and branch tracks, timber lands for ties and wood, gravel-pits, stone quarries, coal pockets, water stations, springs, brooks, and ponds, and rights of way for laying pipes, for water supply, track-ways in the vicinity of important railroad centres, coal and lumber yards, and a great variety of other things needful in conducting great railroad lines.

In regard to great numbers of these parcels of land in the City of New York, in the State of New York, outside of the city, and in the States of New Jersey and Pennsylvania, the counsel for the plaintiffs take the ground that they are not embraced by the description in the mortgage, and that consequently they fall into the mass of general assets, to be administered for the benefit of the creditors at large.

It is my opinion that these lands are embraced in that portion of the description which reads: "Together with all the lands, tracks, lines, rails, "bridges, ways, buildings, piers, wharves, structures, erections, fences, "walls, fixtures, franchises, privileges, and rights of the said company." The word "lands" in this portion of the description is unqualified, and must be held to cover all lands held for railroad purposes, whether it has any meaning beyond that or not. I think that the counsel for the plaintiffs take quite too narrow a view of the language, when they contend that it does not "cover any lands except those *necessarily* used for the *track* "of the company—a strip six rods in width—and the land *actually used* "by the company for its *structures* and *erections*." To take this ground is to treat the separate and independent word "lands" as without meaning, and giving it no office in the sentence. If it means the "*tracks*," then why was the word "*tracks*" inserted immediately after the word "*lands*"? If it means also the "*structures* and *erections*," then why were these afterwards expressly and specifically named in the clause? Such a construction is not consonant with reason and the general scope and object of the instrument. The things to which the counsel for the plaintiffs con-

tend that the word "*lands*" exclusively applies—namely, "*tracks*," "*structures and erections*"—were expressly named, and therefore the word "*lands*" must be held to apply to something else. And the fact that nearly everything else pertaining to a railroad, except such outlying parcels of land, was also expressly named, leaves really nothing but the latter to which the word "*lands*" can apply.

All the railroads were mortgaged, and everything constituting a part of them was particularly mentioned. Whatever was appurtenant to the railroads, or convenient or useful to have in connection with their construction, maintenance and operation, and which it was lawful for the company to acquire and hold for such purposes, were clearly incident and appurtenant to the principal thing, and passed with it.

All the "*franchises, privileges and rights*" of the company were mortgaged, and these, with what had been previously described, would take away, in case of foreclosure and sale, its whole capacity as a railroad corporation, and leave it with no need of, or use for, anything which it had acquired to be used in connection with the business or operation of its roads, and with no motive for withholding anything of this character from those to whom its roads and franchises should pass, and every motive on its and their part to have these lands go with the general property and interests to which they bore such intimate relation, and for the use in connection with which they were acquired. I think they did so pass.

There are two parcels of land situated at Aquackanonk, New Jersey, one parcel containing eleven $\frac{61}{100}$ acres, and the other seventy-three $\frac{94}{100}$ acres, which stand upon a different footing from those lastly above considered. They are known as "The Frederick Farm," and "The Post Farm." They are farming lands. They are not used for railroad purposes. They are rented out. They were purchased in 1871, and the title taken in the name of Jay Gould. "These farms lie several hundred feet "from the line of the railway—in one case, about half a mile. They were "acquired for the purpose of building a suburban town." They were con-

veyed by Gould to the company as a part of the "restitution property." Had the company made the original purchase, I should hold it *ultra vires*. But as they were taken somewhat in the character of the collection of a debt, or in "restitution" by Gould in place of funds of the company which he had misappropriated, it cannot be so considered. But however it is to be regarded, the company had title to the property when the mortgage was executed, and if covered by the description, it passed under the mortgage. I think it is covered by the word "lands," and that the assigns of the purchasers at the mortgage sale have good title to it.

A question is also raised as to the status of property acquired since the mortgage went into effect, some by the Erie Railway Company and some by the Receiver. There is no express provision in the mortgage subjecting to its operation after-acquired property. The decision of this question must, therefore, be governed by general principles and judicial authority.

It is in evidence that all this after-acquired property lies in immediate connection with the tracks of the company, its depots and other railway property—that it was purchased for use in connection with them, and that it virtually forms a part of them—that no part of it can be prudently separated from the bulk at present, and that much of it is indispensable for railway purposes. I think that this has worked a legal annexation of this after-acquired property to the property held by the company when the mortgage went into effect, and has subjected it to the operation of the mortgage, and that it passed under the foreclosure and sale, and has become vested in the new corporation, which has succeeded the Erie Railway Company. This view seems to be fully sustained by the case of the *Galveston Railroad* vs. *Cowdrey*, 11 Wall., 460, and the New Jersey case therein referred to in relation to the Morris Canal Company.

There is another consideration touching some of this property. The Receiver acquired many parcels of it, and used in the purchase of it "tolls, issues, income and profits," which belonged to the mortgagee. This

clearly gave the latter an equitable right, under the mortgage, to the property so acquired. It was of itself an equitable conversion of the property to subjection under the mortgage, and upon this ground alone that portion of the property would pass under the foreclosure and sale.

The next subject for consideration is the property, the character and description of which, and the facts and circumstances of the acquisition and possession of the same, are fully stated in the Fifth, Sixth, Seventh and Eighth divisions of my Report.

The counsel for the respective parties to this action, anxious for an early decision of the questions involved in this reference, have conveyed to me their wishes, that this report and opinion shall be made to this Court at the earliest day practicable, and my own desire in the premises has given me a very brief time for the preparation of this opinion. This part of the report covers and includes a great amount and variety of property, so that the full consideration of the facts relating to each class would involve much delay in the presentation of this report and opinion to this Honorable Court, and I have considered all of the same as one general class, falling under the same rules of law, except a portion that I deem to be most valuable or important for the consideration of this Court, that I will consider separately.

At the conclusion of the Eighth division of my Report I have stated conclusions of law and fact that I deem applicable to all this property, when considered as one class, and I re-state them as my views in this opinion, namely:

1. That all of the said property was lawfully acquired and held by the Erie Railway Company, for actual and necessary railroad uses and purposes, under its charter, and the rights and franchises thereof, and in case of purchase, the same was purchased by said Erie Company, or the said Receiver, with moneys obtained from the rents, tolls, and income of the mortgaged property, or from moneys realized from the sale of the bonds secured by said mortgage.

2. That all of the said described capital stocks and bonds of the several Railroad, Steamboat, Coal and other companies, that are or were corporations of the States of New York, Pennsylvania or New Jersey, as heretofore described, were acquired by the Erie Company as muniments of title to the real and personal property and the rights and franchises of said corporations, and for the purpose of owning, possessing and managing said property and exercising the rights and franchises of said corporations under the charter of said Erie Railway Company, and subsidiary and appurtenant thereto.

3. That all the said described claims and accounts originated and arose from the business and business affairs of said Erie Company, lawfully transacted under and by virtue of its incorporate rights and franchises, and were the legitimate and lawful result of the same.

4. And if it shall be held by this Court, under the circumstances of this case, and having due regard to the relation which all this property sustained to the Erie Company and its railway and other property mortgaged, that this property is to be regarded as *subsidiary and appurtenant to said mortgaged property*, then I find and report as a general conclusion of law and fact, that all of said property and every part thereof was covered by and subject to the lien of said mortgage, and was embraced in the general and particular words of description and conveyance in the said mortgage.

I am of the opinion that the acquisition of all this property should be regarded as the outcome or natural result of the workings and management of this great railway corporation. They are the proceeds or accumulations of its earnings and income, and held as property and assets necessary to be owned and held in its operation and management, and for its safety and protection in a financial sense, not as mere investments, from which the company was to derive income, but as something desirable or

necessary, for the safety and enjoyment of its greater franchises, interests, rights and privileges, a class of property bearing such relations to the Erie Company and its railway system, and all its other property, that the Erie Company acquired and held the same almost, or entirely, as a matter of necessity; and having due regard to the facts and circumstances of its acquirement and relations, which all this property sustained to the Company, I am of the opinion that it is all to be regarded *as subsidiary and appurtenant to said mortgaged property*, and subject to the lien of said mortgage, and embraced within the words of description and conveyance in said mortgage. The descriptive words in the mortgage under which all this property, as one general class, must fall, are these: "*Together with all the* "*franchises, privileges, and rights of the said company, and all the tolls, in-* "*come, issues, and profits arising out of the said property, and all rights to* "*receive or recover the same,*" and in the *habendum* clause, "*together with* "*all and singular the emoluments, income, advantages, tenements, hereditaments* "*and appurtenances thereunto belonging,*" and the "*rents, issues, and profits* "*thereof.*"

But the principal part of this property in point of value and importance, and in regard to the relations it sustained in the Erie Company, and its railway and other property, that was mortgaged, may be considered separately, and as a class of property similar in many respects to the capital stocks of the coal companies, already considered, and in regard to which the greater portion of my opinion, relating to said latter stocks, are applicable.

I refer to the capital stocks and bonds of corporations of the States of New York, Pennsylvania, and New Jersey, that were in direct connection with the railways and the business and business relations of the Erie Railway Company, and the cases where the Erie Company, at the time of the execution of said mortgage, owned the whole or the greater portion of the shares of their respective capital stocks, namely: The Long Dock Company, The Paterson, Newark, and New York

Railroad Company, The Paterson and Newark Railroad Company, The Newark and Hudson Railroad Company, The Pavonia Horse Railroad Company, The National Stock Yard Company, The Jefferson Railroad Company, The Buffalo, Bradford and Pittsburgh Railroad Company, The Buffalo, New York and Erie Railroad Company, The Rochester and Genesee Valley Railroad Company, The Avon, Geneseo and Mt. Morris Railroad Company, The Suspension Bridge and Erie Junction Railroad Company, The Erie International Railway Company, The Union Steamboat Company, and The Union Dry Dock Company, and others of like character and relations.

The capital stocks of these corporations formed a part of the estate, interest and title of the Erie Company, in and to its grand system of railroads known and distinguished as the Erie Railway, which was mortgaged and conveyed in February, 1874.

The Erie Company was in the possession and use of the franchises, rights, privileges and property of all these corporations, at the time it executed this mortgage; and in nearly all of them, it owned all or a majority of the shares of their respective capital stocks, and also had leases for the term of their respective charters, and held and owned the said corporations by virtue thereof; and in other cases it held such possession and use by virtue of being the owner and holder of all the capital stock, as in the cases of The Pavonia Horse Railroad Company, The Union Steamboat Company, The Erie International Railway Company. Yet in both classes of cases, it possessed and used the property and franchises of these corporations as a part of its system or grand combination of railroads. They were, in all respects, not only appurtenant to "The Erie Railway," but were an integral part and portion thereof, and all the estate, property, rights and privileges of the Erie Railway Company, in and to the same, passed and were conveyed by this mortgage to the Farmers' Loan and Trust Company.

It appears to me that the capital stock of said companies constituted a

material and component part of title or ownership, and that a mortgage, conveying all the ownership, rights, interests and estate of the Erie Company, in and to these railroads, carried with it, and subjected to its lien, all these capital stocks and bonded indebtedness, and I hold that these stocks and bonds were not only *subsidiary and appurtenant* to said mortgaged property, but were really an integral part and portion of the same. My previous views in regard to the capital stocks and lands of the coal companies are fully applicable to these capital stocks. Unquestionably (as there considered) the Erie Company owned and possessed "*franchises, privileges and rights,*" in and to these corporations and their property and franchises, that passed to the mortgagees under the mortgage, and if anything passed, all passed, and there is nothing left of these stocks and bonds that can be administered upon by the Attorney-General of the plaintiffs, for and in behalf of the general creditors of the Erie Company.

As before intimated, I would be glad to express more fully and in detail, my views in regard to the relations of each class and description of property embraced in these respective divisions of my report; but I must leave them to the consideration of the learned counsel in the case, and to this Honorable Court. Although I have thus far considered each class of property and its relations to the Erie Company and said mortgage and mortgaged property upon the question, *as to whether or not the same was included in and covered by the general or particular words of description and conveyance in said mortgage*, yet I am of the opinion that the title and interest of the Erie Railway Company to the whole of this property has already passed and become vested in the New York, Lake Erie and Western Railroad Company, the assignees of Messrs. Morgan, Wells and Welsh, the purchasers at said foreclosure sale, beyond all recall or change, under and by virtue of proceedings in the foreclosure action, and the conveyance of the Erie Company.

This presents the question as to the right of the plaintiffs to attack the validity and legal force of any of the proceedings in the action of The

Farmers' Loan and Trust Company against the Erie Railway Company and others for the foreclosure of the mortgage in question. That was an independent action between other parties. It might have been brought before this action was commenced, and prosecuted to judgment, making only the mortgagor, and persons holding liens upon the mortgaged property subsequent in date to that of the mortgage, parties defendant. The People would have no right to be made parties. They had no lien upon the property, and would have had no interest in any question that would be involved in such a suit. Whatever the character of the decree, and however much or little property might be adjudged thereby to be subject to the lien of the mortgage, and ordered to be sold thereunder, would be no concern of the People, and could not be thereafter questioned by them. It would bind the parties assumed in this discussion to be the only parties in interest, and parties not in interest could not, by any method, or in any form, question the decree.

In what different position stands the judgment of foreclosure obtained by The Farmers' Loan and Trust Company in the action which it did bring? True, that action was not commenced till after this action had been. And The Farmers' Loan and Trust Company, as mortgagee, was made a defendant in this action. But in the complaint in this action the plaintiffs made no such claim as to what was mortgaged to that Company as they have made on this reference. No such question was involved in this suit till years after. After this action was commenced, and at some time prior to the 14th day of June, 1875, an order was entered herein giving leave to The Farmers' Loan and Trust Company to commence a separate action for the foreclosure of the mortgage which has been foreclosed. In the absence of anything appearing to the contrary, it may be assumed that that order was unconditional, and without any special provision as to who should be made parties.

This being so, then such action stood upon the footing of an action of foreclosure commenced and prosecuted to judgment prior to the com-

mencement of this action. The action thus commenced by the Farmers' Loan and Trust Company, by leave of the Court, entered in this action, was an independent action, to be prosecuted the same as if this action were not pending. The People were no more required to be made parties than in such a case. If those standing in such relation to the property as to be entitled to be made parties, were joined in the action so as to make the judgment binding upon them, it bound all the world, and the People would have no more right to interfere than any private party having no interest in the property.

The People did not become the representatives of the unsecured creditors by bringing this action. The rights of those creditors might have been affected by the proceedings in this action. Had the plaintiffs not let The Farmers' Loan and Trust Company loose by giving it leave to foreclose its mortgage in an independent action, they might have kept the question raised on this reference within their reach. But as it is, they cannot question in this action what was done in that action. Whatever was adjudged in that action to be covered by the mortgage, and directed to be sold and conveyed by foreclosure, and whatever the Erie Railway Company was directed, by that judgment, to convey, by way of further assurance, as part of the mortgaged property, binds the parties to that action; and whoever seeks to attack it must have a legal status for that purpose, which I think the People of the State of New York have not. This is a question of property, and not one of political sovereignty, and the People, like any private suitor, must show a property right or interest to acquire a standing to contest these matters. The People are not the guardians of all the creditors of corporations in the State. They must show that they are something more than simply the People, before they can intervene in litigations, and engage in controversies, relating exclusively to the rights of private parties. They must have some other warrant for it than any which appears in their behalf in this case. The judgment in the foreclosure action determined what should pass under the

sale, and directed the Erie Railway Company what it should convey by way of further assurance. That must stand, until reversed or vacated, as against everbody but those who were entitled to be made parties, but were not. I do not think the People such a party.

It will be observed in the findings of fact (pp. 24, 25, 26), that practically, the counsel for the plaintiffs, suspended all proceedings in this action from December 31st, 1875, when it was understood that this action was to be discontinued, until December 26th, 1877, and he then appeared only for the purpose of an examination into the accounts and proceedings of the Receiver, before giving consent to his discharge and the discontinuance of the action. Not till the 20th day of May, 1878, did the counsel for the plaintiffs make any claim in regard to property alleged to be not covered by the mortgage, nor was the question raised in the pleadings in this action until April 2d, 1879. In the meantime judgment of foreclosure was entered, the property sold thereunder, conveyance made to the purchasers, the new corporation organized, the property conveyed to the latter, and by it bonds were issued to the amount of many millions, and the property was mortgaged to secure the payment of such bonds. These acts cannot be affected by any question thereafter raised in this action, or by any proceeding which can be taken herein, and the rights and interests thereby created and vested, must stand undisturbed until set aside by a direct proceeding to that end, against all the parties who may be thereby affected.

It is possible that the Receiver ought to have been made a party to the foreclosure action. He, if anybody, represented the unsecured creditors. There may be some doubt if he did. It may be that they should have taken steps on their own behalf and placed themselves in a position to intervene. Upon this question I do not attempt to pass. It is enough that the Receiver is not a contending party, and does not claim any rights or ask any relief touching the property which the plaintiffs seek to withdraw

from the operation of the judgment in foreclosure and the conveyances thereunder.

But if the Receiver were a necessary party to the foreclosure action, in the absence of anything to affect his position, this is obviated, and he is estopped from raising the questions on this reference which the plaintiffs have raised, by the fact that, by an order of this Court, entered in the foreclosure action on the 15th day of June, 1875, he was made Receiver in that action, and in that action he has ever since proceeded with his accountings as Receiver, and he has been fully cognizant of all the proceedings in said action.

Moreover, the Receiver was made a party to the decree, by being directed to do certain acts under it, and to receive certain assignments from the Erie Railway Company in aid and furtherance of the decree touching the contested assets. And the same gentleman who was Receiver was also President of the Erie Railway Company, which was directed to assign to the Receiver, and also to make the conveyance to the purchasers under the foreclosure.

And had not the decree directed the Erie Railway Company to convey the disputed property to the purchasers under the foreclosure sale, there was a large and valuable consideration for the conveyance in the millions of money derived from the "tolls, incomes, issues and profits" of the road, to which the mortgagees were entitled, which had been appropriated to the payment of the debts, and for other objects, of the Erie Railway Company. For this consideration, the conveyance was good as against everybody but those having a lien upon those assets, which the plaintiffs had not.

I am therefore of the opinion that Hugh J. Jewett, as Receiver in this action, did not acquire, hold, or dispose of any property or assets not covered by the lien of the mortgage of The Erie Railway Company to The Farmers' Loan and Trust Company, which has been foreclosed.

In the foregoing views and conclusions of law and equity expressed in

regard to the facts, I have held that the title and estate of all of this property passed to the New York, Lake Erie & Western Railroad Company, as the assignees of Messrs. Morgan, Wells and Walsh, the purchasers at the mortgage sale, under and in pursuance of the terms of said mortgage, the proceedings in this and the said foreclosure actions, the judgment in the foreclosure actions, and the sale and transfer of the property thereby, and the approval of this Court by its final order in said foreclosure actions.

If, in the investigation of this case, this Honorable Court should determine that my views and conclusions in the premises are erroneous, or if doubts of their soundness and integrity should appear, there is another view of the case arising upon the equity side of this Court that deserves consideration.

The counsel, in the presentation of the facts and in their arguments of the issues before me, seemed to have concentrated all their learning and logic to establish the relations of the personal property, which is a part of the subject of this enquiry and examination, to and under the mortgage.

Upon the assumption based upon the claim of the counsel for the Attorney-General, that it is not covered by or subject to the lien of the mortgage, and did not pass under the judgment and foreclosure sale, I proceed to consider another view of the equities of The Farmers' Loan and Trust Company, the purchasers at said sale, or their assigns, in and to the same, based upon the following conclusions of law and fact, already stated in this report and opinion:

1. The mortgagees were entitled to all the tolls, rents, profits or income of the mortgaged property.

2. The Receiver was authorized and directed by this Court to pay from said income certain debts of the Erie Company existing before the Receivership and to make certain advances to the coal companies, and he complied with such directions, and did pay from his receipts large sums exceeding in the aggregate $10,000,000.

3. The aggregate value of all the personal property that he received, which the counsel for the plaintiff claims was not covered by the mortgage, or subject to the lien thereof, was much less than the amounts he was directed to pay for the Erie Company, &c., by this Court.

This being the situation, does not an equity arise in favor of the mortgagees against the personal property to the extent of such payments made by the Receiver, and do not the mortgagees become subrogated to all the rights and interests of the Erie Company and its creditors to said property, to the extent of these sums so paid?

This Honorable Court must have decided the foregoing question in the affirmative when it ordered and directed in the said foreclosure actions, on the 6th day of April, 1876, that all this property, stocks, bonds, &c., "*alt with by the said Receiver in all respects as a part of the general fund and estate embraced in the mortgages to the plaintiffs respectively, and in the Receivership in these actions, and among other things, for the reimbursement to plaintiffs of all sums paid under the orders of this Court out of the proceeds of the mortgaged premises for the discharge of the debts due from the defendant, the Erie Railway Company, at the date of the Receiver's appointment, for labor and supplies.*"

Also, "*That the Receiver have power from time to time, as in the exercise of his best discretion it may appear to be proper and necessarg so to do, to sell or otherwise dispose of all or any part of the said stocks and bonds at public or private sale, at such time and in such manner, from time to time, as in the exercise of such discretion will be most for the advantage of his trust, and to use and apply the said securities, or the proceeds thereof, for any and all of the purposes for which he is or may be authorized to use and appropriate the income of the mortgage premises, having due regard to the legal and equitable rights of all persons having specific interests in the said stock and bonds by way of pledgees, pledgors, trustees, or cestuis que trust.*"

The Receiver sold and applied some of these securities, others he did

not, yet he went on with the payment of the debts of the Erie Railway Company, as ordered and directed from time to time by this Court.

These payments were made, practically as well as theoretically, for the benefit and advantage of the Erie Company, and, incidentally, they were for the benefit and advantage of all persons (including the general creditors of the company) interested in the whole property and the financial affairs and interests of the Erie Company. It was apparent to this Court, and to every one, that if the payments were not made, the financial interests of the company would fall into hopeless confusion, and its creditors, of each and all classes, would become so many warlike and contending factions engaged in the destruction and the disintegration of this great public corporation, and private and public interests would alike suffer in the struggle.

It was right, just, and equitable, that these payments should be made from the entire fund of the Receivership, and that all the property of the Erie Company not subject to the lien of the mortgage should be applied and used for that purpose. Such property was the *primary fund* in the premises. There was no other property that could be applied to this purpose, and there was no person or corporation liable, by obligation or agreement, to pay the same, except the Erie Railway Company, which was then hopelessly bankrupt, and dispossessed of its entire property, real and personal, and therefore, by the order and direction of this Court, this property was designated and appropriated for this purpose to the extent of its value and proceeds, and the burden of any balance of this amount required was placed upon the funds of the mortgagees.

It is true that, if the interest of the mortgages that had a prior lien to the one foreclosed had not been paid, action might have succeeded action in this Court in their foreclosure, and financial disaster followed disaster, until the Erie Company and its fortunes, and its public capabilities, conveniences, and responsibilities become a complete wreck, yet neither class

of mortgage creditors was bound, by obligation, to pay the bonded indebtedness that existed as prior lien upon the property.

The Receiver having made these payments from the rents, tolls, and income of the whole mortgaged property, there is no other means of reimbursement or repayment of any part or portion of the same except it be from the property of the Erie Railway Company, not covered by the mortgage, as claimed by the Attorney-General.

The Receiver has sold and applied a small portion of the same, and the application of all the rest, at their greatest possible value, would fall far short of the aggregate amount of the said payments.

The creditors of the Erie Company have been paid on their just claims to an amount exceeding the value of all this property, by the order of this Court. This fact is not contested, but the Attorney-General complains that it was paid to a certain class of creditors, and that the class that he represents in this action acquired no benefit therefrom, and that it is the first and paramount duty of this Court to consider and protect the latter class. I cannot realize that any distinction in this respect should be made. If this Court has, in its discretion, by its orders in the premises, directed the Receiver in a certain course of action *that it deemed best for the interest of all classes of creditors, and for the public interest,* and thereby diverted from the mortgagees certain moneys that, by law and equity, belonged to them, directing the Receiver to reimburse these moneys from moneys and property in his possession belonging to the debtor, then I am of the opinion that thereby an equity was created in favor of the mortgagees for the application of all this personal property to such repayment or reimbursement, and that the general creditors represented by the Attorney-General in this action are bound to establish that said property, in proceeds or value, exceeds said payments, before they can claim any resulting interest in any of this property or its proceeds.

In regard to the material facts stated in my Report, concerning the plan for the reconstruction and reorganization of The Erie Railway Company,

I have no views or opinions to express, unless it is to state that my convictions and judgment are fully in favor of the same. In my opinion there existed a great necessity for the formation and execution of this plan or scheme; not for personal or financial interests alone, but in order to preserve and perpetuate the franchises and privileges and the utility of The Erie Railway Company, for the benefit and interest of the people of the States where those franchises and privileges were in force and being, and also for the people of the adjacent States, directly or indirectly interested in the same.

A great public institution, whose real and personal estate in the States of New York, New Jersey and Pennsylvania amounted to many millions of dollars, the value of whose public privileges, franchises, and the necessity, utility, and responsibilities to the public of said States, as a common carrier of freight and passengers, were incalculable, became involved in financial difficulties and embarrassments to that extent that a further continuance in its sphere of duty as a public institution was seriously threatened, and it became necessary that the judicial power of said States should interpose for its temporary protection and preservation in this action and others, until its shareholders and creditors could devise and execute practicable plans, ways and means, to secure permanently its future welfare and usefulness as a public institution, without injustice or wrong to those who had invested their means in its corporate stock and bonds.

Then the shareholders and bondholders of this great corporation came together in council to devise and perfect plans and ways and means that would—

1*st*. Preserve the great public franchises and privileges, and continue their use and operation and their utility to the public, without cessation, discontinuance or abridgment; for such a result must be considered as primary and paramount, and one imperatively demanded by the public

interests of said States, and one to be enforced by its judicial tribunals, if necessary.

2*d*. Relieve this corporation from its financial difficulties, by a wise reconstruction and reorganization of the same upon a sound financial basis, saving and preserving to its shareholders and creditors all their rights, interests, and property that could be saved and preserved.

There was much wisdom and ability exercised in the development and perfection of the plan of reconstruction and reorganization.

The shareholders and bondholders acted in unison with the judicial and legislative tribunals of said States, until at length this great public institution was reorganized, reconstructed, and re-established in the exercise of all its powers, franchises and usefulness, and without cessation or discontinuance of the same to the public for a single day, during the development and perfection of these plans and ways and means, and without the loss of a single legal or equitable right to any shareholder or creditor.

The public tribunals, the shareholders, and the creditors each moved within their own sphere of action, but in unison towards the desired end, and The New York, Lake Erie, and Western Railway Company, now exercising all the powers and franchises and the duties and responsibilities of The Erie Railway Company, is the result of such action.

Supreme Court, New York County.

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,
vs.
THE ERIE RAILWAY COMPANY and others,
Defendants.

APPENDIX

To the REPORT of JAMES C. SPENCER, Referee, in the matters referred to him under the order entered in the above entitled action, on the 20th day of May, 1878, and submitted to said Referee on the 5th day of April, 1879, and containing Exhibits referred to in said Report.

AUGUSTUS SCHOONMAKER, JR.,
Attorney-General, for Plaintiff.

AMASA J. PARKER,
LUKE F. COZANS,
Of Counsel.

WILLIAM W. MACFARLAND,
Of Counsel for ERIE RAILWAY COMPANY.

HERBERT B. TURNER,
Of Counsel for THE FARMERS' LOAN AND TRUST COMPANY.

CHARLES L. ATTERBURY,
For HUGH J. JEWETT, *Receiver of the Erie Railway Company.*

"EXHIBIT A."

At a Special Term of the Supreme Court of the State of New York, held at the Court House in the City of New York, on the 26th day of May, A. D. 1875.

Present—The Hon. CHARLES DONOHUE, *Justice.*

THE PEOPLE OF THE STATE OF NEW YORK, *agst.* THE ERIE RAILWAY COMPANY, HUGH J. JEWETT, and others.	*Order Appointing Receiver.*

A motion on behalf of the plaintiff in this cause having been made for leave to amend the summons herein and make new parties defendant, and for leave to file an amended and supplemental complaint; and also for the appointment of a Receiver of the property and franchises of the Erie Railway, according to the statute in such case made and provided, as is alleged; and also for an injunction, as by the motion papers herein will fully and at large appear; and the said motion now coming on to be heard, and Wilber M. Brown, Esq., as counsel for the People in this behalf, duly delegated by the Attorney-General, appearing and moving for and on behalf of the People; the defendant, the Erie Railway Company, as well as the other defendants who have been served and have appeared in this action having by Shipman, Barlow, Larocque & MacFarland, their attorneys in this action, expressly waived any and all objections for want of notice, and having admitted due and legal notice and service of the motion papers herein:

Now, therefore, on the proposed amended summons and proposed amended and supplemental complaint herein, duly verified, and on the affidavit of the said Wilber M. Brown, Esq., and on motion of the said Wilber M. Brown, of counsel for the plaintiff, and after hearing William W. MacFarland, Esq., on behalf of the said Erie Railway Company and the aforesaid other defendants, and due deliberation having been had, it is ordered:

1. That the summons in this action be, and the same is hereby amended as prayed for.

2. That leave be granted, and leave is hereby granted to file the proposed amended and supplemental complaint in this action as prayed for.

And the said summons being so amended, and the said amended and supplemental complaint ihavng been duly filed, it is further ordered: That Hugh J. Jewett, now the President of The Erie Railway Company, be and he is hereby appointed Receiver of all and singular the property and franchises of the said defendant The Erie Railway Company, mentioned and described in the complaint in this action, and all and singular the appurtenances in anywise thereto appertaining, and of all records, books, papers and accounts of the said company in anywise appertaining to the business thereof, and necessary to enable him properly and efficiently to perform the duties imposed upon him by this order.

That he give a bond for the faithful performance of his duties as Receiver in the premises in the sum of five hundred thousand dollars, with sureties to be approved as to form and sufficiency by one of the Justices of this Court, and that on the filing of such bond he enter forthwith upon the performance of his duties as such Receiver.

And it is further ordered:

1. As soon as may be after he shall have entered upon the performance of his duties, the said Receiver shall make and file with the Clerk of this Court a true, full, and complete inventory of all and singular the property of the said company, real and personal and mixed, of all which he is appointed Receiver.

2. The said Receiver shall continue the operation of the said road in the ordinary and usual course as the same is now operated in the common carriage of freight and passengers, having due regard to the public interest and the accommodation of the public, and keeping the premises and property, both real and personal, in good condition and repair, to the end that the said road may be efficiently operated with safety and convenience to the public. To the same end he shall from time to time employ and discharge all needful laborers, servants and agents, and purchase and pay for all such needful material and supplies as may seem to him to be necessary and proper in the exercise of a sound discretion, with leave to apply to the Court from time to time as he may be advised for directions in the premises. He shall settle and adjust according to usage and the usual course of business, all outstanding traffic balances with other railroads, and like balances from time to time as may arise. And he shall have power to make all usual, necessary, and proper arrangements for the interchange of business in the way of traffic arrangements, and he shall have power generally to do and perform all things usual and proper according to the rules and usages of good railroad management, to increase the business of the said road, and promote the convenience of the public.

He shall have power to prosecute and defend, without the further order of this Court, all existing actions by or against said Company, and to pay and defray the usual and ordinary expenses incident thereto. He shall have power to commence and prosecute any actions which in the usual course of business he may deem it proper and necessary to commence hereafter, either in the name of the said Company, or in his own name as such Receiver, as he may be advised. He shall have full power to defend any and all suits that may hereafter be brought against the said Company, or against himself as such Receiver, by the permission of this Court, and to defray the necessary and proper expense of such prosecution and defences. He shall do whatever may be needful to maintain and preserve the corporate organization and franchises of the said Company till final judgment in this action, and to defray the necessary and proper expenses incident thereto, and in all and singular the premises he shall be subject to such orders and directions as this Court may from time to time make, and he is authorized to apply from time to time for such orders and directions as he may be advised.

3. As soon as may reasonably be done, after he shall have entered upon the performance of his duties, the said Receiver shall pay and discharge all debts due from the said Company to laborers, servants, agents and employees of all kinds for services rendered in and about the operation of the railroads of the said company, and in and about the conduct and management of its lawful business. Such payments shall not embrace debts due for more than four months prior to the entry of this order, without the further order of this Court in the premises.

4. He shall in like manner ascertain the amount due by said Company, and unpaid for current materials and supplies purchased for the use and operation of the railroads of the said Company, within four months prior to the entry of this order, and he shall pay the amount found to be justly due, but he shall not have power to pay any such debts of longer standing without the further order of this Court.

5. He shall have power to redeem any and all securities of the Company now pledged as security on loans of money, and if needful shall have power to borrow money for this purpose, and he shall also have power to borrow money if needful in his judgment, in order to comply with the directions contained in the third and fourth paragraphs of this order, and so far as may be needful to pay for current necessities for labor and supplies, but for no other purpose without the order of this Court.

6. The said Receiver shall keep a true, full, and particular account of all his acts and doings as such, of all the property, rents, revenues and incomes, and of all his payments and disbursements in the performance of the duties imposed by this order. And he shall once in every three months, and oftener, if required, render to this Court, and file with the clerk thereof, a true, full, particular account of all his receipts and disbursements in the premises. He shall keep all balances of moneys in his hands on deposit in some bank of approved credit, subject to his order, and he shall not pay out, but safely keep subject to the further order of this Court, all such moneys, except in so far as payment and disbursements are authorized by the, terms of this order. The premises considered, it is further ordered, that the said defend.

ant, The Erie Railway Company, be, and the said Company is hereby commanded and strictly enjoined not to pay, or cause or permit to be paid, any interest upon any of the mortgage bonds of the said Company until the further order of this Court in the premises.

And the said Company, and each and all the officers and agents thereof, are also strictly commanded and enjoined to deliver up and render to the said Receiver, when he shall have become qualified according o the terms of this order to enter upon his duties as Receiver, all and singular the premises whereof he is hereby appointed Receiver, and is further ordered that each of the said defendants, trustees respectively of the mortgages referred to in the complaint in this action, be and they hereby are severally and respectively restrained and enjoined from commencing or prosecuting, or causing, or permitting to be commenced or prosecuted, any action against the said Company, or in anywise affecting the property thereof, and from in anywise interfering with the said Company or the property thereof, as such trustees, without the further order of this Court.

(A copy.) WILLIAM WALSH,
Clerk.

"EXHIBIT B."

At a Special Term of the Supreme Court of the State of New York, held at the Court House in the City of New York, on the ninth day of June, A. D. 1875.

Present—The Honorable CHAS. DONOHUE,
Justice.

THE PEOPLE OF THE STATE OF NEW YORK, *against* THE ERIE RAILWAY CO., and others.	*Order Extending Receivership.*

On the proceedings heretofore had in this cause, on the answer of The Farmers' Loan and Trust Co., on the admission of due service of notice of motion endorsed on this order, on the consents thereon endorsed, the affidavit of Edgar Logan, Esq., and on motion of H. B. Turner, Esq., of counsel for the said Farmers' Loan and Trust Company, it is ordered, That the Receivership heretofore created in this cause be extended to the said mortgages whereof the said Farmers' Loan and Trust Company is Trustee, as in said answer is alleged, and the Hon. Hugh J. Jewett, heretofore appointed Receiver in this cause, be, and he is hereby ordered and adjudged to be Receiver under the said mortgages, in the same manner and in the same effect, to all intents and purposes, as though the said Receiver had been appointed in an independent action brought by the said Farmers' Loan and Trust Company, as Trustees, to foreclose the said mortgages whereof the said Trust Company is Trustee, saving all rights of the plaintiff herein as they may appear; and all and every the orders heretofore made, touching the said Receivership, are hereby confirmed and declared to embrace, and be applicable to the Receivership hereby established, according to their true intent and tenor; and leave is hereby given to the said Farmers' Loan and Trust Company, Trustee, to apply from time to time for such other and further orders as the said company may be advised are proper or necessary for the enforcement or the protection of the rights of said company in the premises as Trustee.

(A copy.) WILLIAM WALSH,
Clerk.

"EXHIBIT C."

THE PEOPLE OF THE STATE OF NEW YORK, *agst.* THE ERIE RAILWAY COMPANY, H. J. JEWETT, and others.	*Order Extending Receivership.*

At a Special Term of the Supreme Court, held at the Court House, in the City of New York, on the fifteenth day of June, 1875.

Present—Hon. CHAS. DONOHUE, *Justice.*

On reading and filing the answer of D. B. Eaton in this action, and his affidavit therein, sworn to on the fifteenth day of June instant; and after hearing Mr. Edgar Logan on behalf of the plaintiff, and William W. Macfarland on behalf of the Erie Railway Company; and on motion of said Eaton, as attorney in person:

It is Ordered, That the Receivership in this suit be, and the same is hereby extended therein to the mortgaged property, rights, income, and franchises covered by the mortgage to said Eaton as Trustee mentioned in said answer, and also to the property, income, rights, and franchises covered by said fifth and supplemental mortgages in said answer mentioned, which said property, rights, income, and franchises said Receiver shall hold, protect and preserve, or make disposition of the same according to the legal and equitable rights of those secured by said mortgages respectively, and said Receiver shall, as he may be properly advised by counsel, so keep his accounts, and prepare and file inventories, that it may be practicable at any time to ascertain the amounts and income of said mortgaged properties, respectively, and the disposition made thereof. But this appointment of said Receiver (the Hon. Hugh J. Jewett), as Receiver under said mortgages in this suit, shall be without prejudice to the appointment of a Receiver under said mortgages, respectively, in any suit for the foreclosure of either of the same.

(A copy.) WILLIAM WALSH,
Clerk.

"EXHIBIT D."

At a Special Term of the Supreme Court of the State of New York, held at the Court House in the City of New York, on the 20th day of May, 1878.

Present—Hon. CHARLES DONOHUE, *Justice.*

THE PEOPLE OF THE STATE OF NEW YORK, *against* THE ERIE RAILWAY COMPANY, and others.	*Order and Petition. Reference to James C. Spencer.*

Upon reading and filing the petition of the Attorney-General in the above-entitled action, bearing date the 18th day of May, 1878, and after hearing the Attorney-General for the People, William W. MacFarland, Esq., of counsel for the defendant The Erie Railway Company, Herbert B. Turner, Esq.,

of counsel for the defendant The Farmers' Loan and Trust Company, Dorman B. Eaton, Esq., of counsel for the defendant J. C. B. Davis, Trustee, &c., and Charles L. Atterbury, Esq., of counsel for Hugh J. Jewett, Receiver, &c.,

It is ordered:

First.—That James C. Spencer be, and he is hereby appointed Referee, to examine, adjust, and pass upon all the accounts, acts, and doings of Hugh J. Jewett, Receiver in this action, for and during the entire period of his said Receivership And that, for the purpose of such accounting, the accounts heretofore rendered by the said Hugh J. Jewett, as Receiver in the action of the Farmers' Loan and Trust Company against The Erie Railway Company, and which have been examined and passed upon by the said James C. Spencer, as Referee, duly appointed in said action and approved by this Court, shall be deemed and taken as accounts rendered and filed in this action, but shall not preclude the Attorney-General from making such further examination of said accounts, acts, and doings as he may deem necessary, and such action thereon by the Referee and by this Court as may be just and proper; nor preclude the Attorney-General nor this Court from requiring additional or more specific accounts by said Receiver. And the said Referee shall take testimony for the purpose of ascertaining what property or assets, if any, the said Hugh J. Jewett, as Receiver in this action, acquired, held, or disposed of, not covered by or subject to the lien of the mortgage of The Erie Railway Company to The Farmers' Loan and Trust Company, which has been foreclosed, and if any such property has been disposed of by said Receiver, what disposition has been made thereof; and also what rights and equities, if any, the said Farmers' Loan and Trust Company, the purchasers at the foreclosure sale of the mortgaged premises, or their assigns, had or have in or to such property or assets, or any part or portion thereof; and that the said Referee report to this Court the testimony so taken by him, and the material facts which he shall deem established by such testimony, with his opinion thereon, for the further action of this Court.

Second.—It is further ordered, that for the purpose of such examination into the Receiver's accounts, acts, and doings, as hereinbefore authorized, and for the purpose of ascertaining the facts concerning the existence and disposition of assets and property subject to be administered in this action, and all matters pertinent to the inquiries ordered by this reference, the Receiver, and all such other persons as may be competent and material, may be examined as witnesses before the Referee.

Third.—It is further ordered, that the Attorney-General have leave, upon the footing of his application aforesaid, and of this order, to apply, whenever he may deem it expedient or necessary so to do, for the appointment of a Receiver in the place and stead of Hugh J. Jewett, the present Receiver in this action, recently elected President of the said New York, Lake Erie, and Western Railroad Company.

Fourth.—It is further ordered, that the said James C. Spencer, Esq., be and he hereby is appointed Referee in this action, to take proof of the facts and circumstances stated in the pleadings therein, and report the same, with his opinion thereon, to this Court.

Fifth.—It is further ordered, that the said Referee examine and separately report what costs and allowances, and also what disbursements, compensation and expenses, if any, shall be taxed and allowed by this Court, and paid by the Receiver, to any of the parties who have appeared in this action, as Trustees or otherwise, including the Attorney-General, for plaintiff.

(A copy.) HENRY A. GUMBLETON,

Clerk.

(*Title of Action.*)

To the Supreme Court:

The Attorney-General, referring to the papers and proceedings in this action, respectfully represents to the Court, upon information and belief:

First.—That on the 26th day of May, 1875, Hugh J. Jewett was appointed Receiver in this action, and that after such appointment, to wit, on or about the 14th day of June, 1875, the defendant, The Farmers' Loan and Trust Company, brought an action in this Court for the foreclosure of a mortgage of The Erie Railway Company to the said Farmers' Loan and Trust Company, as Trustee, under date of February 4th, 1874.

That by an order entered in the said action on the 15th day of June, 1875, the Receivership of the Hon. Hugh J. Jewett, the Receiver in this action, was extended, upon the application of the said Farmers' Loan and Trust Company, to the action of that Company for a foreclosure, and thereupon the said Hugh J. Jewett became Receiver of all and singular the mortgaged premises. That the said action of foreclosure was prosecuted to judgment, and judgment therein was rendered for the plaintiff on the 7th day of November, 1877.

That in pursuance of such judgment, the mortgaged premises were sold on the 24th day of April last past, and purchased by Edwin D. Morgan, John Lowber Welsh, and David A. Wells, for the sum of six million dollars.

That afterwards, in pursuance of the statutes of this State in such case made and provided, the said purchasers, associating with themselves fourteen other persons, made, executed, and filed in the office of the Secretary of State a Certificate of Incorporation, under and by virtue of which the Attorney-General is informed and believes the said purchasers and their associates became and are a body politic and corporate under the name of "The New York, Lake Erie and Western Railroad Company."

The Attorney-General is informed and believes that the sale so made has been confirmed by this Court; that the Referee has executed a deed of conveyance to the purchasers; that the Erie Railway Company has executed a deed in confirmation, and that the purchasers have executed a deed to the said New York, Lake Erie and Western Railroad Company.

Second.—The Attorney-General, referring to the judgment of foreclosure above-mentioned, further represents that he is informed and believes that there are assets and property of The Erie Railway Company not embraced in the said mortgage or in the said judgment, and also that there are assets and property embraced in the said judgment, but not covered by the said mortgage.

The Attorney-General desires that full inquiry and examination may be had touching the existence of any such property or assets, to the end that if any such there be, the same may be dealt with and administered in this action according to law.

Third.—The Attorney-General is informed and believes that the said Hugh J. Jewett, Receiver as aforesaid, under and in pursuance of the said order of June 15th, 1875, made in the aforesaid case of The Farmers' Loan and Trust Company against The Erie Railway Company, has accounted to James C. Spencer, Esq., Referee, for his receipts and disbursements, acts and doings, down to and including the month of February last past, and that all his accounts to, and including the months aforesaid, have been duly reported to this Court by the said Referee, and approved and confirmed; that neither the said, nor any other Referee, was appointed Referee in this action to take and state the accounts of the Receiver, and that, commencing with the 1st of January of the present year, the Attorney-General has attended, by his representatives, the said accounting before the Referee.

Fourth.—The Attorney-General further represents, that for the purpose of such examination and inquiry as to the existence of assets and property subject to be administered in this action, and for the purpose of making such examination into the Receiver's accounts as may be needful, a Referee should be appointed by this Court, with full power in the premises.

The Attorney-General begs leave to reserve the right to make such other and further application in

the premises as he may be advised to be proper and necessary, whenever in his judgment the necessity therefor may arise.

The Attorney-General further represents, that it would facilitate the proper and final disposition of this action, if the action should also be referred to the Referee that may be appointed to make the examination and take the testimony aforesaid, for the purpose of taking proof of the facts and circumstances stated in the pleadings in this action, to the end, that the Court may be advised as to the proper judgment and decree to be rendered herein.

Dated May 18th, 1878.

(Sd.) A. SCHOONMAKER, JR.,
Attorney-General.

City and County of New York, ss. :

LUKE F. COZANS, of counsel for the People in the above-entitled action, being duly sworn, deposes and says, that he is acquainted with the facts set forth in the foregoing petition; that the facts stated therein are true to deponent's own knowledge, except as to the matters stated on information and belief, and as to those matters he believes it to be true.

LUKE F. COZANS.

Sworn to before me, this 20th day of May, 1878,

MICHAEL A. GEARON,
Notary Public (65),
N. Y. City and County.

"EXHIBIT E."

At a Special Term of the Supreme Court of the State of New York, held at the Court House, in the City of New York, on the 14th day of March, 1879.

Present—HON. CHARLES DONOHUE, *Justice.*

THE PEOPLE OF THE STATE OF NEW YORK, *against* THE ERIE RAILWAY COMPANY, HUGH J. JEWETT, *et al.*	*Order—Leave to File Supplemental Complaint, etc., etc.*

On reading the proposed supplemental complaint in the above-entitled action, and on reading and filing the affidavit of Luke F. Cozans, Esq., verified on the 7th day of March instant, and on motion of said Luke F. Cozans, representing the Attorney-General for the People, &c., after hearing William W. Macfarland, Esq., of Counsel for the defendant The Erie Railway Company, Herbert B. Turner, Esq., of Counsel for the defendant The Farmers' Loan and Trust Company, Trustee, and D. B. Eaton, Esq., one of the defendants in person, and as Counsel for the defendant J. C. B. Davis, Trustee, and due deliberation having been had,

It is Ordered, that leave be, and the same is, hereby granted to the said plaintiff, to file and serve a supplemental complaint in this action, in addition to its former pleading, therein alleging the commence-

ment of, and proceedings in an action lately pending in this Court, wherein the Farmers' Loan and Trust Company, Trustee, was plaintiff, and the Erie Railway Company, and others, were defendants, including the decree of foreclosure therein, and the subsequent proceedings of said parties taken on the footing of said decree, in the form of the proposed supplemental complaint above mentioned.

And on like motion, *it is ordered*, that as to all the parties named as defendants to this action, except the said The Erie Railway Company and The Farmers' Loan and Trust Company, this action be, and the same is, hereby discontinued, without costs to any of such parties, and that the summons and complaint, and all subsequent pleadings and proceedings therein, be amended by striking out the names of the defendants as to whom this action is so discontinued, and that the action proceed as against said Erie Railway Company and The Farmers' Loan and Trust Company as the only defendants.

This order to be without prejudice to any of the proceedings heretofore had or taken on the part of the plaintiff, or any of the said defendants.

"EXHIBIT F."

N. Y. SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK, *against* THE ERIE RAILWAY COMPANY, and others.	*Amended and Supplemental Pleadings.*

The People of the State of New York, by A. Schoonmaker, Jr., their Attorney-General, in addition to the matters set forth in their complaint in this action, by way of supplement thereto, further complain and allege—

First.—That after the commencement of this action, and after the appointment of a Receiver therein by an order of this Court, made and entered on the 26th day of May, 1875, to wit, on or about the 14th day of June of the same year, The Farmers' Loan and Trust Company of the City of New York, Trustee, brought an action against the defendant, The Erie Railway Company, for the foreclosure of two certain mortgages theretofore made by the said Erie Railway Company to the said Farmers' Loan and Trust Company, to secure the payment of certain bonds of the former Company, described in the said mortgages, which mortgages and the bonds secured thereby were and are described in the complaint in the said action, to which the plaintiffs crave leave to refer. That afterwards, on the 15th day of June, 1875, upon the application of the said Farmers' Loan and Trust Company, plaintiff, in the said action, such proceedings were had that a Receiver under the said mortgages was appointed by an order of this Court then duly made and entered, to which order the plaintiffs crave leave to refer.

Second.—That J. C. Bancroft Davis, Trustee, also brought an action against the said Erie Railway Company and others, on or about the said 14th day of June, 1875, to foreclose a certain mortgage theretofore made by the New York and Erie Railroad Company of its property and franchises (which were subsequently acquired by the Erie Railway Company, subject to such mortgage), to secure certain bonds of the said New York and Erie Railroad Company. The principal of the said bonds not having matured, and the interest which had accrued thereon having been paid and discharged by the beforementioned Receiver, under an order of this Court, the said action was on or about the
day of discontinued.

Third.—That such proceedings were had in the action of the said Farmers' Loan and Trust Company against The Erie Railway Company, and others, that on or about the 24th day of September, 1877, the said plaintiffs The Farmers' Loan and Trust Company filed its amended complaint, a copy whereof is hereunto annexed, marked "Exhibit A," to which the plaintiffs crave leave to refer; and

on the 7th day of November, 1877, a judgment of foreclosure was duly rendered in favor of the plaintiff and against the defendant The Erie Railway Company in the said action, which judgment remains of record in this Court, and a copy whereof is annexed to this complaint, marked "Exhibit B," to which the plaintiffs crave leave to refer. That afterwards, to wit, on the 24th day of April, 1878, under and in pursuance of the said judgment of foreclosure, the mortgaged premises were sold at the Merchants' Exchange Sales Room, in the City of New York, by George Ticknor Curtis, Esq., Referee, duly appointed to sell the same, and by William Patterson, Esq., Master in Chancery, in the Court of Chancery, of the State of New Jersey, in which State a part of the mortgaged premises were and are situate, the said William Patterson being duly authorized in that behalf. The Referee's Report of the said sale is hereto annexed, marked "Exhibit C," to which the plaintiffs also crave leave to refer.

Fourth.—That a corporation under the name of The New York, Lake Erie and Western Railroad Company was duly formed by the purchasers of the mortgaged property and franchises aforesaid, according to the provisions of the statutes in such case made and provided, and on or about the day of June, 1878, the said Receiver, having been thereto duly authorized by this Court, surrendered the railroad and franchises, together with all the appurtenances thereof, so sold as aforesaid, to the said New York, Lake Erie and Western Railroad Company, which since that time has, and now does, possess the same.

Fifth.—That under and in pursuance of the order of this Court, made and entered on the 20th day of May, 1878, the accounts, acts, and doings of the Receiver in the premises down to and including the 30th day of September, 1878, have been duly examined by or under the direction of the Attorney-General, and have been presented to, passed upon, and approved by this Court; that the inquiry before the Referee named in said order as to the existence of any property of the Erie Railway Company not covered by the said mortgages, and if any, what disposition has been made thereof, or of any part of the same, and as to what rights and equities attach thereto, is now proceeding. The plaintiffs crave leave to refer to the said order as occasion may require.

Sixth.—That the defendant, The Erie Railway Company, at the date of the appointment of the Receiver in this action, on the said 26th day of May, 1875, was wholly insolvent for more than a year then last past, as alleged in the complaint in this action; that the said Company has continued to be wholly insolvent, and has during all the time since the appointment of the said Receiver, by reason thereof, been unable to carry on its business, and exercise and employ its franchises as contemplated and required by the laws under which the said Company was created, and by the statutes of this State prescribing the functions and duties of Railroad Companies.

That under and by virtue of the aforesaid judgment of foreclosure, and the sale made in pursuance thereof, the said Company has been wholly and permanently deprived of the property and franchises necessary to enable it to carry on the business for which it was created, and the said Company ought to be dissolved.

And the plaintiffs allege that, for all the reasons hereinbefore mentioned, The Erie Railway Company, the said defendant corporation, ought to be dissolved by the judgment and decree of this Court, in conformity with the statute in such case made and provided, and the property of the said company, if any shall be found, duly distributed to and among its creditors according to law.

Wherefore the plaintiff prays, that the said corporation be dissolved by decree or judgment of the Court; that a Receiver be appointed to take charge of the property of said corporation, if any there may be, and carry into effect the orders of this Court; that the assets belonging to said corporation may be marshaled and duly distributed as the Court shall hereafter direct, and for such other and further relief as to the Court may seem just and proper, with costs.

A. SCHOONMAKER, JR.,
Attorney-General,
Albany, N. Y.

City and County of New York, ss.:

LUKE F. COZANS, being duly sworn, deposes and says, that he has been and is now one of the

counsel for the Attorney-General for the plaintiff in the above-entitled action, and that as such counsel he has become acquainted with the facts set forth in the above complaint; that said complaint is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

LUKE F. COZANS.

Sworn to before me, this 10th day of March, 1879,

JOHN E. PHELPS,
Notary Public,
N. Y. and Kings Co.

(*Title of Action.*)

The separate answer of the defendant The Erie Railway Company to the original and supplemental complaints of the plaintiffs in the above entitled action.

I.—This defendant admits that the allegations contained in the first, second, and third paragraphs of the said original complaint are true, except in so far as the facts therein alleged have been and are affected by the subsequent events referred to in the said supplemental complaint, to which in this behalf reference is here had.

II.—This defendant denies that the bonds referred to in the fourth paragraph of the said complaint as second consolidated mortgage bonds were issued without authority of law, and denies that they are void, and alleges that the said bonds, to the extent that the same were, or have been issued, and all of them were and are held by *bona fide* holders thereof for value, and in this behalf this defendant alleges that the so-called first consolidated bonds were and are likewise good and valid, according to their tenor and that the mortgage executed to secure the same by this defendant is a legal and valid instrument according to the tenor thereof. This defendant admits that the remaining allegations of the said fourth paragraph are substantially true. This defendant denies that the purchase of the coal land referred to in the eighth paragraph of the said complaint was *ultra vires*, and denies that the alleged agreement for a lease of the railroad of the said Atlantic and Great Western Railroad Company mentioned in the ninth paragraph of the said complaint was *ultra vires* and void. This defendant admits that the remaining allegations in the sixth, seventh, eighth, and ninth paragraphs of the said complaint are substantially true.

III.—This defendant does not admit the allegations contained in the tenth and eleventh paragraphs of the said complaint, and leaves the plaintiffs to make such proof thereof as they may be advised.

IV.—This defendant does not admit the accuracy in all respects of the computations, amounts, and figures contained in the twelfth and thirteenth paragraphs of the said complaint; but with the exception of such errors and discrepancies as may be found to exist in such computations, amounts and figures, the allegations contained in the said paragraphs are admitted to be substantially true.

This defendant does not admit the allegations contained in the first subdivision of the fourteenth paragraph of the said complaint, but does admit that all the other allegations in the said fourteenth paragraph are substantially true, with the exception of the allegation that a large or any part of its mortgage debt is fraudulent, which allegation the said defendant denies.

V.—This defendant admits that the allegations contained in the supplemental complaint in this action are true.

SHIPMAN, BARLOW, LAROCQUE & MACFARLAND,
Attorneys for Defendants.

City and County of New York, ss.:

AUGUSTUS R. MACDONOUGH, of said City, being duly sworn, deposes and says that he is the Secretary of the Erie Railway Company, one of the defendants in the above-entitled action: that the foregoing answer is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Sworn before me this 13th day of March, 1879. } AUG. R. MACDONOUGH.

EDSON G. HAMMOND,
Notary Public.

(*Title of Action.*)

The defendant The Farmers' Loan and Trust Company answers the supplemental complaint of the plaintiffs herein, as follows:

I.—This defendant is a corporation duly incorporated and existing under the laws of the State of New York, with full power and authority, among other things, to assume and execute all manner of legal trusts, and to receive conveyances in trust by corporations or others, to secure bonds or other indebtedness.

II.—It is true that after the commencement of this action, and after the appointment of a Receiver herein, and on or about the 14th day of June, 1875, this defendant brought an action against the defendant The Erie Railway Company and others, to foreclose the mortgages which are mentioned in the complaint herein as the so-called first and second consolidated mortgages of the Erie Railway Company; and also, that on the 15th of June, 1875, uppon the application of this defendant, a Receiver was appointed under the said mortgages by this Court.

III.—It is also true that J. C. Bancroft Davis, trustee, about the same time brought an action against the said Erie Railway Company and others, including this present defendant, to foreclose a mortgage prior to the said so-called first and second consolidated mortgages, which mortgage so sought to be foreclosed was made by the New York and Erie Railroad Company, to secure certain bonds of said Company; but it is not true, so far as this defendant is informed and believes, that said action has been discontinued by order of this Court.

IV.—It is also true that such proceedings were had in the action so brought by this defendant against the said Erie Railway Company and others, that on or about the 24th day of September, 1877, this defendant filed its amended and supplemental complaint in that action, in which complaint it stated, for due cause shown, that this defendant did not further pursue or prosecute in that action its right to relief with respect to the first consolidated mortgage, and prayed for the ordinary judgment of foreclosure and sale under the second consolidated mortgage only.

V.—It is also true that on the 7th day of November, 1877, a judgment of foreclosure and sale was duly rendered in favor of this defendant, and against the defendant The Erie Railway Company and the other defendants in the said action so brought and prosecuted by this defendant as aforesaid, which judgment still remains of record in this Court; and also, that afterwards, on the 24th day of April, 1878, under and in pursuance of the said judgment, the premises included in the said second consolidated mortgage were sold at the Merchants' Exchange Salesroom, in the City of New York, by George Ticknor Curtis, Esquire, Referee, duly appointed by the judgment aforesaid to sell the same, and by William Patterson, Esquire, Master in Chancery, of New Jersey, in which State a part of the mortgaged premises were situated, the said Master in Chancery making such sale under and in pursuance of a judgment and decree in a certain suit in the Court of Chancery of the State of New Jersey, ancillary to the action so brought by this defendant in this State as aforesaid.

VI.—It is also true that a corporation, under the name of the New York, Lake Erie and Western Railroad Company, was duly formed by or in the interests of the purchasers of the property and franchises covered by said mortgage at the said foreclosure sale, according to the provisions of the statutes in such case made and provided, and that subsequently the Receiver, having been thereto duly authorized by this Court, surrendered the railroad and franchises, together with all the appurtenances thereof, so sold as aforesaid to the said New York, Lake Erie and Western Railroad Company, which since that time and now is in possession of the same.

VII.—The purchase of the said mortgaged property, premises and franchises at the said foreclosure sale was made by a purchasing committee, under and in pursuance of an agreement made and entered into by and between the holders of a very large majority of the bonds of The Erie Railway Company secured by the first and second consolidated mortgages, and the stockholders of the said Company. The said purchasing committee consisted of Edwin D. Morgan, J. Lowber Welsh and David A. Wells, who, on or about the 26th day of April, 1878, received from the Referee, George Ticknor Curtis, a conveyance of the same, made in pursuance of an order of this Court, confirming the sale, which conveyance is dated that day, and is recorded in the office of the Register of the City of New York, on the same day, in Liber 1446, page 212; and also, subsequently, in other counties in the States of New York, New Jersey and Pennyslvania, in which the mortgaged premises were in part situated. On the same day the defendant The Erie Railway Company executed and delivered a confirmatory deed of the same property to the said Morgan, Welsh and Wells, dated the same day, and recorded the same day in the office of the Register of the City and County of New York, in Liber 1446, page 219; and also recorded in other counties as aforesaid. The said Morgan, Welsh and Wells also received from the said William Patterson, Master in Chancery, a conveyance of all the property, premises and franchises so sold to them by him as aforesaid, which said conveyance bears date the 8th day of May, 1878, and is recorded in the office of the Register of the County of Hudson, New Jersey, on the 21st day of June, 1878, in Liber 325, page 109, and in other counties in the said State of New Jersey.

The said Purchasing Committee having thus become legally seized and possessed of the property and franchises so purchased by them as aforesaid, conveyed the same to the said New York, Lake Erie and Western Railroad Company by two deeds, the first dated the 27th day of April, 1878, and recorded in the office of the Register of the City and County of New York on the same day, in Liber 1437, page 454, and also recorded in other counties in the States of New York, New Jersey and Pennsylvania; and the second, dated the 15th day of May, 1878, and recorded in the office of the Register of the County of Hudson, New Jersey, on the 21st day of June, 1878, in Liber 325, page 127, and in other counties in the said State of New Jersey.

VIII.—In pursuance of the said before-mentioned scheme of reorganization duly entered into, the said New York, Lake Erie and Western Railroad Company having thus become the owner of the mortgaged property and premises, and being thereunto duly authorized, on or about the 5th day of October, 1878, made and executed to this defendant, as trustee, its certain deed of trust or mortgage dated that day, a copy whereof is hereto annexed, marked Schedule A, to secure bonds issued and to be issued by the said Railroad Company, which mortgage is recorded in the office of the Register of the City and County of New York on the 9th day of October, 1878, in Liber 1407, at page 274, and in the other counties in the States of New York, New Jersey, and Pennsylvania, in which property covered or affected by the said property is situate. To each of the above-mentioned deeds, and to the said mortgage, or to certified copies of the same, this defendant prays to refer as part of this its answer.

IX.—By virtue of the matters and things hereinabove recited, and the proceedings had in the actions above-mentioned, this defendant has been and now is invested with the title in trust to all the property, premises, and franchises of every sort and description which were of the defendant The Erie Railway Company, and which were included in the mortgage or deed of trust of the said Railroad Company, so made by it to this defendant as aforesaid, and known as the second consolidated mortgage of the said Erie Railway Company; and this defendant is advised, and therefore charges, that the property which was the

subject of the said second consolidated mortgage, and of the sale made thereunder as aforesaid, and of the several conveyances and mortgages hereinabove mentioned, is and includes all the property of the said Erie Railway Company which was appurtenant and appendant to its franchises, and which it owned at the time of the delivery of the said second consolidated mortgage, or acquired after that time in the due exercise of its franchises, and for the purposes of such exercise.

X.—This defendant refers, as part of this its answer, to the answer heretofore made by it in this action to the amended complaint heretofore filed herein, which answer was verified the 9th day of June, 1875, the allegations of which answer it hereby renews and repeats, except so far as the facts stated in said answer have been and are affected by the subsequent events alleged or referred to in the supplemental complaint herein, or in this defendant's answer thereto.

XI.—It is true that under and in pursuance of an order of this Court, the accounts, acts, and doings of the Receiver in the premises down to and including the 30th day of September, 1878, have been duly examined by or under the direction of the Attorney-General, and have been presented to and passed upon and approved by this Court, and that the inquiry before the Referee named in the said order, is the existence of any property of The Erie Railway Company not covered by said mortgages, and, if any, what disposition has been made thereof, or of any part of the same, and as to what rights and equities attached thereto, is now undetermined.

XII.—It is also true, as this defendant is informed and believes, that the defendant The Erie Railway Company, at the date of the appointment of the Receiver in this action, was wholly insolvent, and has continued to be wholly insolvent up to the present time, by reason whereof it has been unable to carry on its business, and to exercise and employ its franchises as contemplated and required by the laws under which the said Company was created, and by the statutes of the State respecting the functions and duties of railroad companies, and that by virtue of the matters hereinabove set forth and alluded to, it has been permanently deprived of the property and franchises necessary to enable it to carry on the business for which it is created; but whether, in consequence thereof, it ought to be dissolved, this defendant is not advised.

Wherefore this defendant prays, that this Court will, in and by this action, settle and determine what, if any, of the property now or formerly of the defendant The Erie Railway Company, was not included in the mortgage foreclosed in the action brought by this defendant as aforesaid; and what, if any, of the said property is not included in the mortgage so made to this defendant by The New York, Lake Erie, and Western Railroad Company as aforesaid, and that if any property shall appear to be exempt from said mortgages, and not subject to the liens thereof, then and in such case that an account may be had of the same, and such distribution made thereof among the parties entitled thereto, including this defendant as trustee for the holders of the bonds secured by said second consolidated mortgage, so far as the said bonds have not been fully paid and discharged by the proceedings had in the said foreclosure suit, as may be agreeable to equity.

TURNER, LEE & McCLURE,
Attorneys for the Defendant,
The Farmers' Loan and Trust Company,
20 Nassau Street, N. Y.

City and County of New York, ss. :

ROSEWELL G. ROLSTON, being duly sworn, says, that he is the President of The Farmers' Loan and Trust Company, the defendant named in the foregoing answer; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

R. G. ROLSTON.

Sworn to before me, this 20th day of March, 1879,

JOHN McCLURE,
Notary Public,
N. Y. Co.

(*Title of Action.*)

The People of the State of New York, plaintiff, by A. Schoonmaker, Jr., their Attorney-General, for reply to The Farmers' Loan and Trust Company, to the supplemental complaint in this action.

First.—Alleges and shows that at the time the Receiver heretofore appointed in this action entered upon the performance of his duties as such Receiver, he became seized and possessed of all the assets of the said Erie Railway then in possession of said Company, including a large amount of stocks and bonds of other corporations, real estate in the City of New York and elsewhere in the States of New York, New Jersey, and Pennsylvania, and of certain property, choses in action and effects, which were not embraced in the mortgage known as the second consolidated mortgage of The Erie Railway Company, nor subject to the lien thereof.

And that also during his said Receivership the said Receiver has lawfully acquired, for the benefit of the estate of The Erie Railway Company, certain other property, including stocks and bonds of other corporations, which are not affected by said mortgage, nor subject to the lien thereof.

Second.—That said property was improperly, wrongfully, and unlawfully included in the judgment entered in the action to foreclose the said second consolidated mortgage, and in the sale thereunder; and was improperly, wrongfully, and unlawfully included in the deeds to the purchasers at such sale, and in the deeds to The New York, Lake Erie, and Western Railway Company from said purchasers, and in the mortgage by said New York, Lake Erie, and Western Railway Company to the said Farmers' Loan and Trust Company, which deeds and mortgage are referred to in said answer of the said Trust Company.

Third.—And the said plaintiffs deny that by reason of any proceedings had in said foreclosure action, or by reason of any of said conveyances, or of said mortgages, the said Farmers' Loan and Trust Company has been, or is now, invested with the title, in trust or otherwise, to any of the aforesaid property, stocks, bonds, real estate, and effects, or any part or portion thereof, or has any right or claim thereto.

Fourth.—And said plaintiff, for further reply, alleges, that no judgment for a deficiency which might arise on the sale of the mortgaged property was granted to the said Farmers' Loan and Trust Company, as plaintiff in the action, to foreclose the said second consolidated mortgage, nor has any action been authorized or commenced for the recovery of such deficiency, if any, and that the said Farmers' Loan and Trust Company, as trustee or otherwise, has no claim on account thereof against any assets of The Erie Railway Company not covered by the said mortgage.

Fifth.—And that the holders of bonds of The Erie Railway Company, represented in said proceedings by the said Farmers' Loan and Trust Company, as their trustee, in accordance with the plan or scheme of reorganization referred to in said answer herein, and to which they were parties, have accepted and received the bonds of the said New York, Lake Erie and Western Railway Company, in exchange for the bonds of The Erie Railway Company held by them, and known as the first and second consolidated mortgage bonds; that they have suffered no loss by reason of said foreclosure proceedings, and have no right, title, or claim in or to the assets of The Erie Railway Company remaining in the possession of the Receiver, or which may hereafter come into his possession as such Receiver, or to any part or portion thereof.

A. SCHOONMAKER, JR.,
Attorney-General.

City and County of New York, ss.:

LUKE F. COZANS, being duly sworn, deposes and says, that he has been, and now is, one of the counsel for the Attorney-General for the plaintiff in the above-entitled action, and as such counsel has become acquainted with the facts set forth in the above reply; that said reply is true to his own know

ledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

LUKE F. COZANS.

Sworn to before me, this 3d day of April, 1879,

WM. SETTLE,
Notary Public,
N. Y. City and Co.

"EXHIBIT G."

SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK,
vs.
THE ERIE RAILWAY COMPANY, and others.

Stipulation as to Testimony taken, and as to submission of Reference.

Before JAMES C. SPENCER, Referee, April 5, 1879.

The parties to this action, by their respective counsel and attorneys, appearing before the Referee, James C. Spencer, appointed by the order entered in this action on the 20th day of May, 1878, do hereby submit all the testimony and proofs heretofore taken, by and before the said Referee, for the purpose of ascertaining what property or assets, if any, Hugh J. Jewett, the Receiver in this action, acquired, held or disposed of, not covered by or subject to the lien of the mortgage of The Farmers' Loan and Trust Company, which has been foreclosed; and if any such property has been disposed of by said Receiver, what disposition has been made thereof; and also all the testimony and proofs taken by and before said Referee, in regard to the rights and equities, if any, that the said Farmers' Loan and Trust Company, the purchasers at the foreclosure sale of the mortgaged premises, or their assigns, had or have, in or to such property or assets, or any part or portion thereof, and the said Referee is requested to report upon the same as directed by the order of reference.

And it is stipulated and agreed that all the testimony and proofs taken by and before said Referee in the foregoing matters of reference shall be considered by said Referee as testimony and proofs under the fourth division of said order of reference, namely: in regard to the facts and circumstances stated in the pleadings in this action; and the said parties to this action do now submit all the testimony and proofs of the facts and circumstances stated in the pleadings in this action that have been taken by or before said Referee, and request said Referee to report upon the same as directed by the order of reference.

Dated at New York, April 5, 1879.

(Signed) LUKE F. COZANS,
For the Att'y-Gen'l, for the People.

W. W. MACFARLAND,
For Erie Ry. Co. & N. Y. L. E. & W. R. R. Co.

H. B. TURNER,
For F. L. and T. Co.

C. L. ATTERBURY,
Attorney for H. J. JEWETT, Receiver, &c.

"EXHIBIT II."

Copies of the Exhibits, &c., referred to in the Depositions of the several Witnesses examined upon the Reference, as follows:

EXHIBIT No. 1.

Lands and Land Payments to Various Dates—Hillside Coal and Iron Company.

By Whom Conveyed.	Date of Conveyance.	Acreage.			Deed.	Payments to Feb. 4, 1874.		Payments from Feb. 4, '74 to May 26, '75.		Payments from May 26, '75 to May 28, 1878.		Total Payments to May 28th, 1878.	
		Fee.	Surface.	Coal.	Consid'r'tion	Principal.	Interest.	Principal.	Interest.	Principal.	Interest.	Principal.	Interest.
Charles Hagan	July 30, 1873	541. 50	....	....	$107,453 50	$28,580 12	....	$28,580 12	$5,482 91	$26,366 59	$5,625 47	$83,426 83	$11,108 38
" "	Sept. 19, "	97. 34	....	....	19,400 00	19,400 00	....	....	....	....	....	19,400 00	....
Reynolds Stott, *et al.*	" 16, "	81. 00	....	....	16,186 00	4,049 00	....	4,048 83	1,472 43	8,097 66	798 81	16,195 49	2,271 24
Howard Spencer	Dec. 10, "	1,475. 00	....	....	295,000 00	147,500 00	$6,954 66	73,750 00	5,297 74	73,750 00	4,480 99	295,000 00	16,733 39
B. Y. Reid	Mar. 18, "	656. 00	37.	763.									
A. Hand	" 20, "	....	85.	....	400,000 00	110,000 00	....	55,500 00	20,656 10	89,000 00	55,557 66	254,500 00	76,213 76
Amanda Jessup	" 20, "	....	13.13	....									
H. S. Pierce, & D. & H. Canal Co.	Apl. 18, "	172. 64	....	....	60,340 00								
H. S. Pierce	" 18, "	393. 96	....	....	137.183 50	65,840 84	....	65,840 83	9,480 86	14,724 15	15,767 90	146,405 82	25,248 76
Monies & Pughe	" 22, "	186.106	....	....	62,500 00	20,833 34	....	20,833 33	2,850 00	20,833 33	4,804 76	62,500 00	7,654 76
Grassy J. C. & R. R. Co.	" 18, "	446.107	....	....	150,000 00	50,000 00	....	50,000 00	6,840 00	50,000 00	4,236 67	150,000 00	11,076 67
J. W. Peck	" 30, "	66.107	....	....	22,600 00	10,000 00	....	6,500 00	889 20	....	1,767 74	16,500 00	2,656 94
R. D. Lacoe	June 2, "	859.120	....	....	100,000 00	25,000 00	....	25,000 00	5,349 06	....	993 30	50,000 00	6,342 36
" "	" 2, "	31. 72	....	....	9,435 00	3,145 00	....	3.145 00	478 79	3,145 00	264 70	9,435 00	743 49
Heirs Benj. Budd	May 30, "	214. 31	....	....	40,195 62	13,398 54	....	13,398 52	2,047 20	13,398 52	1,111 70	40,195 58	3,158 90
Jesse Thomas	" 30, "	454.144	....	....	35,707 80	8,926 95	....	8,926 95	1.915 36	8,926 95	2,440 64	26,780 85	4,356 00
" "	" 30, "				46,810 00	15,603 32	....	10,000 00	1,315 73	21,206 68	3,486 52	46,810 00	4,802 25
R. D. Lacoe	June 2, "	148. 80	....	....	33,470 00	11,195 00	....	7,425 00	1,624 56	7,425 00	2,639 01	26,045 00	4,263 57
J. H. Swoyer	May 30, "	499.113	....	36.	100,000 00	50,000 00	2,497 50	5,000 00	533 34	45,000 00	4,776 26	100,000 00	7,807 10
W. Townsend and Lydia Maxwell	" 30, "	291. 83	....	....	43,737 80	10,931 90	....	10,931 96	2,345 58	16,397 94	3,439 71	38,261 80	5,785 29
C. A. Miner	" 30, "	53. 48	....	....	7,995 62	1,998 90	....	1,998 90	428 87	1,998 90	239 87	5,996 70	668 74
Ellen G. Stout	" 30, "	53. 48	....	....	7,995 63	2,665 21	....	2,665 21	407 24	2,665 21	227 28	7,995 63	634 52
Catherine Peerson and Ellen Laverty	July 25, "	202. 68	....	....	37,996 00	12,665 34	....	12,665 34	1,919 71	12,665 32	1,058 49	37,996 00	2,978 20
H. E. Klein	" 31, "	123. 30	....	....	27,717 00	11,199 19	....	7,956 52	969 27	5,096 67	961 26	24,252 38	1,930 53
Heirs C. Schlager, dec'd	Nov. 18, "	273.121	....	....	61,595 00	21,198 33	....	20,198 33	2,522 36	20,198 34	1,566 08	61,595 00	4,088 44
A. Hand	Aug. 22, "	400.	....	....	15,000 00	15,000 00	....	....	....	....	....	15,000 00	....
Betsey Briggs	Sept. 16, "	26.	....	....	5,228 13	1,307 03	....	1,307 03	....	2,614 07	260 85	5,228 13	260 85
Silas Briggs	" 16, "	26.	....	....	5,228 13	1,307 03	....	1,307 03	....	2,614 07	310 68	5,228 13	310 68
Keystone, C. & T. Co.	Stock and Franchises.	450.	....	....	87,500 00	87,500 00	....	....	....	....	....	87,500 00	....
J. H. Swoyer, H. C. & I. Co.	"	....	....	....	300,000 00	150,000 00	7,489 20	150,000 00	7,263 19	....	....	300,000 00	14,752 39
		8,234. 82	135.13	799.	$2,236,663 73	$899,245 04	$16,941 36	$586,978 90	$82,099 50	$446,024 40	$116,806 35	$1,932,248 34	$215,847 21

Northwestern Mining and Exchange Company.

C. R. Early	July 13, 1874	12,216. 89	....	11,509 .74	$830,436 55	$67,921 88	....	348,129 86	$50,591 58	$303,848 74	$64,700 88	$740,296 76	$115,292 46
" "	" 13, "	1,062. 82	....	....	37,592 46	....	....	20,396 26					
Isaac P. Martin	Aug. 19, 1873	1,099.133	....	896. 72	200,000 00	50,000 00	....	50,000 00	14,327 34	....	21,000 00	100,000 00	35,327 34
D. C. Oyster	Dec. 9, "	263. 80	....	....	26,000 00	7,250 00	....	6,250 00	1,295 11	12,500 00	1,521 16	26,000 00	2,816 27
		14,641. 64	....	12,405.146	$1,094,029 01	$125,171 88	....	$424,776 14	$66,214 03	$316,348 74	$87,222 04	$866,296 76	$153,436 07

EXHIBIT No. 3.

Advances to Hillside Coal and Iron Co., after crediting all amounts paid thereon.

From March 1, 1873, to February 28, 1874	$857,813 22	
From March 1, 1874, to June 1, 1875	1,131,177 63	
From June 1, 1875, to April 30, 1878	468,439 22	
		$2,457,430 27

Advances to North Western Mining & Exchange Co., after crediting all amounts paid thereon.

From March 1, 1873, to February 28, 1874	$150,621 88	
From March 1, 1874, to June 1, 1875	534,539 04	
From June 1, 1875, to April 30, 1878	440,147 99	
		$1,125,298 91
Total advances		$3,582,729 18

Accounting Dept., Erie Ry., New York, June 7, 1878.

S. LITTLE, *Auditor.*

EXHIBIT No. 4.

Schedule of certain Lands bought by Erie Railway Co. prior to February 4, 1874.

GRANTOR.	GRANTEE.	TOWN.	FOR WHAT BOUGHT.	DESCRIPTION.	Date of Deed.	Cost.	Est. Value.
Daniel Mapes and wife	Erie R'y Co.	Tusten	The Timber on the Land	Adjoins track two miles east of Narrowsburg. 449 acres.	Dec. 1, 1848	$1,347 00	$2,245 00
Geo. La Bar and wife	do.	Hancock	Gravel Pit	Adjoins track on both sides east of East Branch of Delaware River. 10.67 acres.	Sept. 11, 1854	1,067 00	266 75
Wm. Smith and wife	do.	Sanford	The Timber on the Land	Adjoins track on both sides at Summit. 95.48 acres.	May 26, 1847	794 13	954 80
R. M. Hathorn	do.	Horseheads		Triangular piece cut off by road-bed near Junction of North'n Central R. R. 3.28 acres.	Sept. 13, 1865	370 00	665 00
Wm. Carmichael *et al.*	do.	Corning		6.75 acres, adjoining West Corning Bridge. Triangular piece, cut off by road-bed.	Dec. 6, 1851	1,086 75	1,012 00
A. D. Patchin and wife	do.	Warsaw	Hotel Lot	2 acres, adjoining track, opposite Warsaw Station.	April 18, 1862	2,500 00	600 00
B. F. Barrett and ors	do.	Attica	Gravel Pit	1.01 acres, adjoining County line on South.	Aug. 18, 1866	101 00	404 00
Wm. F. Coggswell and wife	do.	Alexander	do.	1.03 acres, adjoining County line on North.	Aug. 18, 1866	103 00	
do.	do.	do.	do.	3.02 acres, adjoining County line on North.	Aug. 24, 1870	200 00	
T. L. Blood and wife	do.	Hanover		3.26 acres, adjoining track at Forestville Station.	Oct. 29, 1850	1,157 30	326 00
Herman Swift and wife	do.	do.		1.51 acres, adjoining track at Forestville Station.	Aug. 16, 1850	425 47	151 00
Uriah Chapman and wife	do.	do.		4.77 acres, adjoining track at Forestville Station.	Feb. 12, 1851	1,582 77	477 00

EXHIBIT NO. 5.

Lands in the State of New York.

Date of Conveyance.	Grantor.	Grantee.	Where Situated.	For What Bought.	Description.	Cons.	Estimated Value.	Remarks.
			City of Buffalo, appertaining to Buffalo, New York & Erie R. R.					
Sept. 27, 1870	Chas. Jas. Murray	Jay Gould	Block bounded by Babcock, Clinton and Williams Streets and Williamsville Road.		Pt. lot 54, B.C.I. Res'n.	$1,062 00		3.54 acres.
Oct. 3, "	Alfred Ogden, Trustee	Same			" 55 do.	1,310 00		2.62 "
" " "	J. D. Ogden	Same			" 55 do.	1,310 00		2.62 "
" " "	T. L. Harison & others	Same			" 55 do.	1,310 00		2.62 "
" " "	C. H. Ogden	Same			" 55 do.	1,310 00		2.62 "
" " "	C. H. de Luze, Trustee	Same			" 55 do.	1,310 00		2.62 "
" " "	J. D. Ogden, Ex	Same			" 55 do.	1,310 00		2.51 "
" 10, "	Chas. Day	Same			" 55 do.	1,310 00		2.62 "
" 1, "	Brinkerhoff & Troup	Same			" 56 do.	4,984 75		11.50 "
" " "	Same	Same			" 61 do.	5,750 00		16.33 "
Feb. 1, 1871	J. D. Ogden, Ex	Same			" 62 do.	2,115 00		4.23 "
" " "	C. H. de Luze	Same			" 62 do.	2,115 00		4.23 "
" " "	C. H. Ogden	Same			" 62 do.	2,115 00		4.23 "
" " "	T. L. Harison & others	Same			" 62 do.	1,808 50		4.23 "
" " "	J. D. Ogden	Same			" 62 do.	1,808 50		4.23 "
" " "	Alfred Ogden, Trustee	Same			" 62 do.	1,808 50		4.23 "
May 24, 1873	Chas. James Murray	P. H. Watson, Trustee			" 54 do.	8,500 00		20 "
June 16, "	Barlow & Day	Same			" 53 do.	13,280 00		26.56 "
" 23, "	Mary H. Germain	Same			" 48 do.	2,033 00		2.033 "
" " "	Edward Bennett	Same			" 49 do.	141 00		.116 "
Sept. 17, 1871	J. Gould, Trustee	Erie Railway Co.	Exchange Street.			35,000 00		
June 24, 1873	Rumsey & Richmond	P. H. Watson, Trustee	Farmer's Point.		Pt. lot 192 do.	67,493 00		26.78 "
			Village of Niagara Falls, appertaining to Suspension Bridge & Erie Junc. R. R.					
Sept. 1, 1871	Porter & Townsend	Jay Gould	Erie & 4th Sts		Lot 13 & pt. 11 Quay St and Pt. 125 9th St.	$14,533 33		Abt. 5 acres.
" 12, "	D. J. Townsend	Same	Quay & 9th St			3,890 00		
			Village of Suspension Bridge, appertaining to Suspension Bridge & Erie Junc. R. R.					
Oct. 16, 1873	H. W. Clark	P. H. Watson, Trustee	Portage Road		Pt. lot 39	$700 00		90-100 acres.
Nov. 3, "	D. H. Ford & others	Same			" 38	5,200 00		3.80 "
" 13, "	Whitney & Trott	Same			" 38	3,500 00		3.64 "
			Lands in the State of Pennsylvania, on Jefferson R. R. (Honesdale Branch).					
Dec. 18, 1872	J. Gould & wife	P. H. Watson, Trustee	Texas, Wayne Co.	Depot Ground	at Honesdale	Unknown.		4 acres.
			Lands in the State of Pennsylvania.					
Jan'y 28, 1873	J. Gould & wife	P. H. Watson, Trustee	Carbondale	Erie Colliery, &c.	Whitmore Property	One parcel One parcel Consideration unknown.		776.151 acres. 5.17 "

EXHIBIT NO. 6.

Abstract of Deeds executed since February 4th, 1874.

GRANTOR.	GRANTEE.	TOWN.	FOR WHAT BOUGHT.	DESCRIPTION.	DATE OF DEED.	DATE OF PAYMENT.	COST.	EST. VALUE.
W. P. Shearman	Erie R'y Co	Passaic	New freight depot	Irregular piece of land, cont'g 34,907 sq. ft.	July 3, 1874		$1	$340
Amos M. Ryerson and wife	"	Wanayonda	Depot grounds, Hampton	Strip of land, 300x30	Feb'y 16, "		41 26	41 26
Andrew Grauss and wife	B N. Y. & E. R. R. Co.	Attica	Double track purposes	" 16½x483 ft	Mar. 21, "		500	500
Christian H. Mayback and wife	P. H. Watson, Trustee	Buffalo	Right of way	Part of lot 86, Holland & Co., 4.03 acres	" 27, "		1,750	1,750
Pascal P. Pratt and wife	"	"	" and other purposes	" 84 & 85, " 84.3 acres, 85.42, 64.	" 28, "		15,903	15,903
Henry J. Goubleman and wife; Rudolph Goubleman, Jr.	Erie R'y Co	Delaware	Double track purposes	One piece of irregular width, cont'g 503-1000's of acre; another piece, 312 long by 20 wide.	May 1, "		40	40
Olive Wooster, Enis B. Wooster and Elizabeth O. Wooster	"	Hancock	Gravel pit		" 11, "		425	
Beebe G. McDonald and wife	"	Livonia	Water right	Right to take water and lay pipe	" 26, "		275	275
Mary A. Dimmick, guardian	Jefferson R. R. Co.	Herrick	Right of way	66x915	" 30, "		75	75
Horatio J. Alcott	Erie R'y Co	Dunkirk	To perfect titl	Depot grounds, Dunkirk	Feb. 23, "		430 78	430 78
Fred. Pilgrim and wife	"	Attica	Double track purposes	Strip of land 4 ft. wide, through Pilgrim lot.	Sept 9, "		1,100	1,100
Sidney S. Munroe and wife	"	Dale	Depot grounds	" averages 541x220	" 17, "		1	100
Mary C., Elizabeth, Julia E., Thankful, and R. M. Knight		Hancock	Double track purposes	" 470 ft. long, irregular width, and cont'g 65-100 acres	Oct. 20, "		40	40
Patrick Vail and wife	"	"	"	The first, a triangular piece, cont'g 8-1000 acres; second, 500x25 ft; third, 284x28½ ft.	Oct. 22, "		50	50
Theodore Young and wife	B N. Y. & E. R. R. Co.	Darien	"	Strip of land, 8¾x2781 ft	" 22, "		1	50
Edmund S. Worth and wife	Jefferson R. R. Co	Ararat	Right of way	" 66 x1029, and 33x137	" 28, "		50	50
Smith Tucker and wife	B. N. Y. & E. R. R. Co.	Avoca	Depot grounds	Triangular piece of land, south side	" 31, "		1	100
Adrian Van Blascom and wife	H. J. Jewett	Aquack'monk	Right of way	Strip of land, 70x1215, between Adrion Sip and Jno. Sip 2.57 acres	" 20, "		1,200	1,200
*Catharine Smith and Catharine Walgur	H. J. Jewett, Trustee	Buffalo	Right of way	Part of lot 83, Holland Co. lands, 33x99	" 21, "		800	800
A. E. and Jno. Dunn	Erie R'y Co	Hancock	Gravel pit	Dunn's interest in land conveyed by Oliver Wooster *et al*	June 8, "		141	
Mary B. Loring	Erie Int. R'y Co	Buffalo	Right of way	Part of lots 84 and 89, Holland Co., containing six acres	Sept. 12, " Ack. Feb., 1875		4,500	4,500
Mary E. Wooster, Milton Wooster, Lucy A. Wooster, R. Parmlee	Erie R'y Co	Hancock	Gravel pit	Irregular piece of land containing 4½ acres	Sept. 28, 1874.		94	
Justin W. Gilbert and wife	Jefferson R. R. Co	Thompson	Water right	Right to take water and lay pipe	Nov. 21, "		100	100
Wm. Baker and wife, and Nathaniel Chadwick and wife	Erie R'y Co	Hornellsville	Double track	Strip of land 16½x669	" 30, "		250	250
Frederick Hirst and wife	Erie Int. R'y Co	Buffalo	Right of way and other purposes	Part of lots 86 and 87, Holland Land Co. 86, 21.42 acres; and 87, 25 acres. Ack'd.	Nov. 1, " June 21, 1875.	.....	11,605	11 605
Jacob Butch and wife	Hugh J. Jewett, Trustee	"	"	Part of lot 86, Holland Co., 1-5th acre. Ack.	Nov. 28, 1874.	.....	100	100
Frederick W. Howell by *Stephen W. Howel, guardian	"	"	Right of way and other purposes					
*Josiah Litchworth and wife; Pascal P. Pratt	Erie Int. R'y Co	"	Right of way and other purposes	" lots 244, 82, 83, and 88, Holland Co., cont'g about 5 acres. Ack.	Sept. 16, " " 19, "	.....	12,500	12,500
Patrick Gilleck and wife	Erie R'y Co	Hancock	Double track purposes	Part of lots 181, 182, 183, and 184 N. Y. Res'n, 99 feet wide diagonally across 6.17 acres. Strip of land, 373 ft. long and 54ft. wide	Dec. 1, " " 3, "		13,750 25	13,750 25

* NOTE. To be conveyed to N. Y. C. & H. R. R. Co.

Ex. No. 6, &c.—*Continued.*

Grantor.	Grantee.	Town.	For What Bought.	Description.	Date of Deed.	Date of Payment.	Cost.	Est. Value.
Alexander S. Macomb and others..	H. J. Jewett, Trustee and Receiver.....	City of New'k	Right of way	Fourth Ave. and Ogden St. Nos. 184 to 189, also parcel on east side of railroad, Fourth Ave., Passaic St., 16 ft.5 in.x345 ft.....	Dec. 23, 1874.		$45,000	$45,000
Isaac Bunheimer and others.....	Erie Int. R'y Co.....	Buffalo	"	Part of lot 79 Holland Land Co., 99x2098, 4.77 acres	Appraised Sept. 28, 1874.		2,027 25	2,027 25
B. F. Slocum and wife.....	Jefferson R. R. Co.....	Ararat	Right of way	Strip of land, 75x1330.....	Jan. 13, 1875.		100	100
Joel Salisbury	"	Thompson ...	Depot site	" 230x67.....	" 14, "		100	100
Thomas Glynn.....	Erie R'y Co.....	Hornellsville.	Double track . ..	" 16½x1410.....	Feb'y 15, "		170	170
John S. Chase and wife	B N. Y. & E. R. R. Co.	Attica	" purposes.	" 10 ft. wide thro' Chase lot.....	Mar. 9, "		200	200
Geo. H. Nowlen and wife.....	Erie R'y Co.....	Avon	Coal pocket.....	Triangular piece containing 1-10th acre	May 17, "		75	75
Fred'k F. Thomas	H. J. Jewett, Receiver..	Castile.....	Water right.....	Right to lay pipe	June 14, "		1	1
John Thompson.....	" ..	"	"	"	" 14, "		7	7
Benj. Burlingham and Harrison W. Smith, Exs. Mellissa Post	" ..	"	"	Right to take water and lay pipe.....	" 17, "		34 30	34 30
James Cleland	" ..	Cohocton	"	" "	July 8, "		1	100
Ashael Kellog and wife.....	" ..	Castile.....	Turn table	Strip of land 33x66.....	" 22, "		1	25
Rosetta M. Parmlee	Erie R'y Co.....	Hancock	Gravel pit.....	Irregular piece of land.....	Aug. 2, "		15 66	
Chas. Hoyt and wife.....	"	Mount Hope.	Additional land depot ground ..	Strip of land 377x6.....	" 9, "		175	175
Eli Aspinwall and wife	"	Cohocton	For switch at Bloods.....	Small triangular piece of land.....	" 16, "		1	25
John O'Loughlin.....	H. J. Jewett, Receiver..	Bath.....	Water right.....	Right to take water and lay pipe	" 23, "		50	50
Cornelius M. Banks and Edwin Banks	B. N. Y. & E. R. R. Co.	Campbell	To perfect title...	Strip of land (right of way) 66x3273	" 24, "		1	479
Chas. W. Lamb and wife.....	Erie R'y Co. and H. J. Jewett, Rec'r E. R'y Co	Oakfield	Water right.....	Right to build dam, lay pipe, &c.....	Sept. 11, "		250	250
Timothy Maroney.....	H. J. Jewett, Receiver.	Grove.....	"	Right to lay pipe	Oct. 5, "		15	15
Thomas W. Tripp	"	"	"	" "	" 14, "		1	1
Jacob Winnemaker.....	B. N. Y. & E. R. R. Co.	Lancaster	Right of way, additional width .	Additional strip of land north of track, between town line and Lancaster.....	Feb. 16, 1876.		80	80
Geo. B. Waller.....	Pa. Coal Co. & Erie R'y Co.....	Lackawaxen..	Water right.....	Right to take water and lay pipe.....	" 19, "		500	500
Nicholas Rost and wife	Erie Int. R'y Co.....	Buffalo	Right of way.....	Part of lot 74, Holland Co., 2.02 acres.....	Mar. 1, "		844 80	844 80
Jacob Kraemer.....	"	"	"	" " 6.63 "	" 1, "		2,375	2,375
Clarissa A. Wooster.....	Erie R'y Co.....	Hancock	Gravel pit.....	Irregular piece of land, cont'g 4¼ "	" 16, "		15 66	
James Scott and wife.....	H. J. Jewett, Trustee..	Paterson.....	Right of way.....	South Paterson lots, 29, 31, and 32. B'ock A..	June 1, "		1,000	1,000
John A. and W. H. Mallinson.....	Erie R'y Co.....	Hohokus	Depot grounds, Allendale.....	Triangular piece at Allendale, 3-10 acre	" 9, "		1	90
Fenal Dimming and wife	"	Erwin	To perfect title, and add'l land.	Strip of land between Erwin and Addison....	" 14, "		100	100
Chas. Carter	H. J. Jewett, Rec'r.....	Niagara	To perfect title..	Right of way.....	" 14, "		16	16
Joseph Eglinger and wife.....	" E. R'y Co	Mount Hope.	Additional land, 2d track.....	Strip of land 1428x17.....	Sept. 1, "		1	112
Benj. F. Brown, J. Lewis Brown, Caroline L. Brown, Sarah A. B. Green, Emily Brown, Mary E. Brown, Wm. H. Brown, and Lettitia P. Brown.....	H. J. Jewett, Rec'r Erie R'y Co.....	Corning	For a privy site..	Piece of land in rear of Corning depot.....	June 1, "		1	50
Amos Stone and wife	Erie R'y Co.....	Cohocton	Depot grounds, Liberty	Strip of land 10x100.....	Nov. 9, "		200	200
John S. Chase	H. J. Jewett, Rec'r....	Warsaw	Water right.....	Right to take water and lay pipe.....	Dec. 12, "		80	80
Jas. Puntell and wife	"	Buffalo	Additional lands, Erie Int. R'y...	Part of lot 231 Parish tract.....	" 17, "		1,600	1,600
Henry C. Hart	"	Hornellsville.	Additional land for switch	Strip of land 2,765 ft. long, cont'g 1.05.....	Jan. 12, 1878.		350	350

EXHIBIT No. 7.

Lands in New Jersey on the line of the Paterson, Newark & New York Railroad.

Date of Deed.	Grantor.	Grantee.	Where Situated.	For What Bought.	Description.	Cons.	Est. Value.	Remarks.
March 1, 1872	Edward M. Weiss and wife	Jay Gould, Trustee	City of Paterson	Right of Way	Lot 30, Block A, lot 49 and 50, block C.	$750 00	....	Frederick Farm.
Feb'y 4, 1871	Nath. Tounsend, Sheriff	Jay Gould	Aquackanonk	Depot and Town	Irregular piece of land, 11.61 acres	5,061 66	....	
" "	Same	Same	do.	Depot and Town	Oblong piece of land 73.04 acres	26,562 73	....	Post Farm.
Aug. 5, 1873	James S. Gamble, Sheriff	P. H. Watson, Trustee	Belleville	Right of Way	Land or right of way 274½ ft. long, 221 7-12 ft. wide	17,943 12	....	Stratenbourgh Tract
May 21, 1873	Sefrina Daily	Same	do.	do.	Strip of 150 ft. x 50 ft., for depot	1 00	....	Daily & Hay agreed to erect a depot on the said lands, May 24, 1873.
" 23, "	Elizb. P. Hay and Silas C. Hay	Same	do.	do.	Strip of 500 ft. x 50 ft., for depot	1 00	....	
" 28, "	Thos. Jerolman and wife	Same	do.	do.	Strip of 100 ft. x 60 ft., for depot	1 00	....	Pass Depot at North Belleville.
August 8, 1873	S. V. C. Van Ransealer	Same	do.	do.	1 piece lot, 48. 51, 1 piece 40x300 ft	3,250 00		
March 9, 1872	Jno. P. Wakeman and wife	John A. Dix, Trustee	City of Newark	Depot and Ground	1 piece 452½ x 45 ft. 1 piece 75 x 45 ft.	35,000 00	....	Improvement of depot
April 8, 1872	James S. and Margt. H. Jackson	Same	do.	Right of Way	1 piece 75 x 45 ft	5,250 00		
May 1, "	Estate of Cath. V. D. Parker	Same	do.	do.	1 piece 84 x 25 (7-100)	3,305 00		
" " "	Marcus L. Ward	Same	do.	do.	1 piece 37½ x 45	2,625 00		
April 5, "	James L. Morris and wife	Same	Belleville	do.	1 piece 50x25 (42-100)	1 00		
May 11, "	Alex. Hayes and wife	Same	do.	do.	....	115 00		
Sept. 1, 1873	Adrian Slp	P. H. Watson, Trustee	Aquackanonk	do.	1 piece 45 x	1 00	....	Centreville Depot.
Nov. 10, "	Same	Same	do.	do.	1 piece 10 x	1 00		do.
May 1, 1872	James Angus and others	John A. Dix, Trustee	City of Paterson	do.	15,642 sq. ft	4,500 00		
" 8, "	Van Idestine Estate	Same	do.	do.	10,004 sq. ft	1,000 00		
June 10, "	Estate of Jos. Warren	Same	do.	do.	....	5,000 00		
Jan. 20, "	Edwin R. Mason and others	Same	do.	do.	100 x	19,000 00		
April 23, "	Anne Crossley and others	Same	do.	do.	1.02 acres	1,480 66		
Sept. 17, 1870	Peter Weller and wife	Jay Gould	Woodside	do.	89-100 acres	5,452 11		
Oct. 10, 1870	Sarah A. and Ely Melins	Same	do.	do.	56-100 acres	1,980 95		
July 24, 1871	Wm. Joyce	Jay Gould, Trustee	Belleville	do.	1.03 acres	1,382 36		
Feb. 12, 1872	Geo. W. Smith and wife	Same	City of Newark	do.	....	50,193 00		
March 1, 1872	Wm. M. Force and wife	Same	do.	do.	....	25,047 00		
Jan. 23, 1871	Hartman Vreeland	Jay Gould, Trustee	City of Paterson	do.	1.79 acres	8,000 00		
Aug. 20, 1870	Nath. Tounsend, Sheriff	Jay Gould	Aquackanonk	do.	....	4,100 00	....	Sundry parcels of land originally conveyed to Paterson & Newark R. R. Co., and sold by Sheriff under judgment claim. Bought in by J. G.
May 19, 1870	Anthony Q. Keasby and wife	Erie Railway Co.	City of Newark (Passaic Street.)	do.	Lots 253-264 on map of May 1, 1851, made by Dunn & Thompson, Surveyors	9,250 00		

Lands in New Jersey on the line of the Newark & Hudson Railroad.

Oct. 21, 1873	Newark Land Company	P. H. Watson, Jr.	Kearney	Right of Way	1.63 acres	$4,830 00	....	Depot purposes.
" " "	Same	Same	do.	do.	57-100 acres	855 00	....	do.

Ex. No. 7—(*Continued*). *LANDS IN NEW JERSEY.*

Date of Deed.	Grantor.	Grantee.	Location.	For What Bought.	Description.	Cost.	Est. Value.	Remarks.
			Pen Horn Creek.					
Aug. 21, 1868	Edward Evans and wife	Jay Gould	Jersey City	Petroleum Depot	39.33 acres	$19,665 00		
" 29, "	Same	Same	do.	do.	5 do.	2,500 00		
Sept. 3, "	Louisa Burdott and husband	Same	do.	do.	9.31 do.	3,650 00		
" 5, "	Garret Vreeland and wife	Same	do.	do.	21 do.	6,300 00		
" 15, "	John Cook and wife	Same	do.	do.	10.50 do.	3,486 00		
" 15, "	Same	Same	do.	do.	10 do.	3,320 00		
" 15, "	Same	Same	do.	do.	10 do.	3,320 00		
" 15, "	Same	Same	do.	do.	11.58 do.	3,844 56		
" 15, "	Same	Same	do.	do.	3.50 do.	1,162 00		
Oct. 1, "	Valentine Oil Company	Same	do.	do.	5.85 do.	3,200 00		
Aug. 21, "	Jno. Kirkpatrick and wife	Same	North Bergen	do.	2.75 do.	756 25		
" 29, "	Edward Evans and wife	Same	do.	do.	8.25 do.	4,125 00		
" 29, "	Same	Same	do.	do.	72 02 do.	21,600 00		
Sept. 15, "	John Cook and wife	Same	do.	do.	1 do.	367 44		
Oct. 1, "	Valentine Oil Co.	Same	do.	do.	114.91 do.	61,800 00		
			Weehawken Branch Connection.					
April 1, 1869	Geo. A. Elliott and wife	Jay Gould, Trustee	Jersey City	Right of Way	3 parcels, Monmouth Street, 1 cont. 1,344 sq. ft. 1 " 8,700 " 1 " 1,625 "	5,634 50		
March 26, 1870	Hoboken Land Impt. Co.	Same	do.	do.	3 parcels, Monmouth Street, 1 cont. 3,570 sq. ft. 1 " 7,280 " 1 " 875 "	1 00		
			Laundry Property.					
Dec. 18, 1872	Lucy D. Fisk	P. H. Watson	Jersey City	Washing waste	West-End Bergen Tunnel, 4 acres	Unknown		
			Weehawken Docks Property.					
Oct. 31, 1868	Weehawken Docks	Jay Gould, Trustee	Weehawken	Petroleum Depot	....	1,620,000		
			Hackensack.					
May 1, 1869	Hackensack & New York R. R Co.	Erie Railway Company	Town of New Barbadoes.	Right of Way	Lot southerly side of Paterson & Hudson turnpike, cont. ½ acre	1,500 00		

Exhibit No. 8.

Grand Opera House Property—

Opera House and Erie Offices.

Dwelling, 311 West Twenty-third Street.
" 313 " "
" 315 " "
" 317 " "
" 319 " "
" 321 " "
" 323 " "
" 331 " "
" 347 " "
" 302 West Twenty-fourth Street.
" 304 " "
" 306 " "
" 308 " "
" 310 " "
" 312 " "
" 314 " "

Leased Lots from Est. of Clement C. Moore—

22d Street, between 11th and 13th Avenues, Lots 840 to 848		9
13th Avenue, " 22d and 23d Streets, " 849 " 856		8
23d Street, " 11th and 13th Avenues, " 857 " 866		10
11th Avenue, " 22d and 23d Streets, " 834 " 839		6
23d Street, East of 11th Avenue, Popham Lots, " 870 " 877		8
24th Street, East of 11th Avenue, " 896 " 897		2
		—
Leased Lots from Matthew Kane—		43
24th Street, East of 11th Avenue, Lots 893 to 895		3
		—
Total		46

Mayor, Aldermen, &c., to Erie Railway Co.—

Lease of Block bounded by Reade, Washington, Duane and West Streets, known as Erie Building.

Term of Lease, 20 years from Nov. 1st, 1868, $11,250 per annum.

EXHIBIT No. 9.—SCHEDULE "A."

Securities owned by the Erie Railway Company, transferred to the custody of Hugh J. Jewett, Receiver, May 27, 1875.

When Acquired.	Description of Securities.	Par Value.	Estimated Cash Value on May 27, 1875.	Remarks.
	STOCKS.			
During 1868	Towanda Coal Company	$450,000	None	Unsaleable; valuable only for organization purposes.
" 1873	Glenwood " "	987,900	None	Same as Towanda Coal Stock.
During 1870, 1873, and 1875.	National Stock Yard Company	239,200	None	
During 1870, 1873, 1874 " 1876 to 1878	Suspension Br. & Erie Junc. R.R. Co.	175,300	None	
" 1873	Erie Ry. Pref. Stock Div'd Certificates.	39,549	None.	
" 1873 and 1875	Jefferson Car Co.	278,400	None	Unsaleable; represents Rolling Stock now in use.
" 1873	Pennsylvania Transport Co.	450,600	None	Unsaleable; intrinsic value unknown. Probably small.
" 1873	Nyack and North'n R.R. Co.	16,100	None	
" 1873	Burk's Locomotive Works	99,000	None	Same as Towanda.
" 1873	U. S. Towboat Co.	7,500	$2,146 07	
" 1873	Northern R.R. of New Jersey	900	495 00	
" 1873	Lackawanna & Susq. Coal & Iron Co.	40,000	6,000 00	
" 1870 and 1873	Jefferson Railroad Co.	2,044,800	None	Same as Towanda.
" 1872	Compressed Air Safety Brake Co.	30,500	None.	
" 1870 and 1872	Erie & Atlantic Sleeping Coach Co.	153,800	153,800 00	
" 1869	Hoboken & Jersey City Horse-Car R.R.	6,000	2,400 00	
" 1869	Harbor Wrecking Co.	2,000	None.	
" 1869 and 1874	Pavonia Horse Railroad Co.	44,000	None	Same as Towanda.
Prior to 1873	Monticello & Port Jervis R.R.	10,000	None.	
During 1869, 1874 & 1875	Union Steamboat Co.	869,000	869,000 00	
" 1870	Union Dry Dock Co.	75,000	75,000 00	
" 1868	Reno Company, Preferred	5,123	2,500 00	
Prior to 1873	Erie Railway, Preferred	7,475	2,242 50	
" to 1873	Walkill Valley R.R.	19,900	None.	
During 1873 and 1874	Buffalo, N. Y. and Erie R.R.	575,900	575,900 00	
Prior to 1873	International Bridge Co. Certificate	4,140	4,140 00	
During 1873	Southern Central R.R.	89,900	8,990 00	
" 1867 and 1868	Buffalo, Bradf. & Pittsburg R.R.	2,016,800	None	Same as Towanda.
Prior to 1873	Paterson, Newark and N. Y. R.R.	250,000	None	
May 9, 1874	New York & New England	100,000	25,000 00	
Nov. 20, 1874	Erie Railway, Common	200	30 00	
Feb. 15, 1875	Union Car Co.	330,500	None	Unsaleable; represents Rolling Stock now in use.
	To which add the undermentioned Stocks owned by the Erie Railway Co., May 27, 1875, but for which Certificates were issued subsequent to that date.			
During 1872	Newark & Hudson R.R.	249,800	None	Same as Towanda.
Prior to 1873	Long Dock Co.	800,000	None	
During 1873	Hillside Coal and Iron Co.	999,300	None	
" 1873	North West'n Mining & Exch. Co.	493,600	None	
" 1867 and 1868	Buff., Brad. & Pitts. R. R.	900	None	
" 1873 and 1874	Erie International Ry.	50,000	None	
	BONDS.			
From 1869 to 1873	Towanda Coal Co., 2d m'tge.	244,000	None	Have offsetting value on account of Debt of Erie for Coal.
During 1870 and 1873	Glenwood " " 1st "	499,000	None	
" 1873	Glenwood " " 2d "	499,000	None.	
" 1873	Glenwood " " Coupons, Feb. 1, '72.	12,285	None.	
From 1870 to 1872	National Stock Yard Co.	655,000	327,500 00	
" 1870 to 1871	Suspension Bridge & Erie Junc. R.R.	35,000	17,500 00	
During 1870	La Mont Mining and R.R.	30,000	None.	
" 1870	New York and Boston Express Co.	170,000	None.	
" 1871	Mariposa Company	1,000	None.	
" 1873	Nyack and Northern R.R.	3,000	1,500 00	
" 1868	Boston, Hartford & Erie R.R. (gtd.)	629,000	157,250 00	
Prior to 1873	Buffalo, Bradford & Pitts. R.R.	185,000	92,500 00	
" 1873	Long Dock Co.	11,000	11,000 00	
" 1873	Paterson and Newark R.R.	235,500	117,750 00	
During 1872	Newark and Hudson R.R.	250,000	125,000 00	
" 1873	New York and Penn. Blue Stone Co.	15,000	None.	
" 1870	Jefferson R.R.	714,000	571,200 00	
" 1870	Newburg and New York R.R.	166,000	83,000 00	
" 1874	Buffalo, N. Y. & Erie, 1st Consol'd.	49,000	41,650 00	
Prior to 1873 and in 1874	Pavonia Horse R.R.	91,500	None.	
Feb 15, 1875	New Jersey and New York Ry.	34,000	17,000 00	
During 1874	Montclair Ry, 2d mortgage	100,000	5,000 00	
	Total	$16,633,772	$3,295,493 57	

Exhibit No. 6.

Abstract of Deeds executed since February 4th, 1874.

Grantor.	Grantee.	Town.	For What Bought.	Description.	Date of Deed.	Date of Payment.	Cost.	Est. Value.
W. P. Shearman	Erie R'y Co	Passaic	New freight depot	Irregular piece of land, cont'g 34,907 sq. ft.	July 3, 1874		$1	$340
Amos M. Ryerson and wife	"	Wanayonda, Hampton	Depot grounds	Strip of land, 300x30	Feb'y 16, "		41 26	41 26
Andrew Grauss and wife	B. N. Y. & E. R. R. Co.	Attica	Double track purposes	" 16½x483 ft	Mar. 21, "		500	500
Christian H. Mayback and wife	P. H. Watson, Trustee	Buffalo	Right of way	Part of lot 86, Holland & Co., 4.03 acres	" 27, "		1,750	1,750
Pascal P. Pratt and wife	"	"	" and other purposes.	" 84 & 85, " 84.3 acres, 85.42, 64.	" 28, "		15,903	15,903
Henry J. Goubleman and wife; Rudolph Goubleman, Jr.	Erie R'y Co	Delaware	Double track purposes	One piece of irregular width, cont'g 503-1000's of acre; another piece, 312 long by 20 wide.	May 1, "		40	40
Olive Wooster, Enis B. Wooster and Elizabeth O. Wooster	"	Hancock	Gravel pit		" 11, "		425	
Beebe G. McDonald and wife	"	Livonia	Water right	Right to take water and lay pipe	" 26, "		275	275
Mary A. Dimmick, guardian	Jefferson R. R. Co.	Herrick	Right of way	66x915	" 30, "		75	75
Horatio J. Alcott	Erie R'y Co	Dunkirk	To perfect titl	Depot grounds, Dunkirk	Feb. 23, "		430 78	430 78
Fred. Pilgrim and wife	"	Attica	Double track purposes	Strip of land 4 ft. wide, through Pilgrim lot.	Sept 9, "		1,100	1,100
Sidney S. Munroe and wife	"	Dale	Depot grounds	" averages 541x290	" 17, "		1	100
Mary C., Elizabeth, Julia E., Thankful, and R. M. Knight		Hancock	Double track purposes	" 470 ft. long, irregular width, and cont'g 65-100 acres	Oct. 20, "		40	40
Patrick Vail and wife	"	"	"	The first, a triangular piece, cont'g 8-1000 acres; second, 500x25 ft; third, 284x28½ ft.	Oct. 22, "		50	50
Theodore Young and wife	B. N. Y. & E. R. R. Co.	Darien	"	Strip of land, 8½x2781 ft	" 22, "		1	50
Edmund S. Worth and wife	Jefferson R. R. Co	Arrarat	Right of way	" 66 x1029, and 33x137	" 28, "		50	50
Smith Tucker and wife	B. N. Y. & E. R. R. Co.	Avoca	Depot grounds	Triangular piece of land, south side	" 31, "		1	100
Adrian Van Blascom and wife	H. J. Jewett	Aquack'monk	Right of way	Strip of land, 70x1215, between Adrion Sip and Jno. Sip 2.57 acres	" 20, "		1,200	1,200
*Catharine Smith and Catharine Walgur	H. J. Jewett, Trustee	Buffalo	Right of way	Part of lot 83, Holland Co. lands, 33x99	" 21, "		800	800
A. E. and Jno. Dunn	Erie R'y Co	Hancock	Gravel pit	Dunn's interest in land conveyed by Oliver Wooster *et al*	June 8, "		141	
Mary B. Loring	Erie Int. R'y Co	Buffalo	Right of way	Part of lots 84 and 89, Holland Co., containing six acres	Sept. 12, " Ack. Feb., 1875		4,500	4,500
Mary E. Wooster, Milton Wooster, Lucy A. Wooster, R. Parmlee	Erie R'y Co	Hancock	Gravel pit	Irregular piece of land containing 4½ acres	Sept. 28, 1874.		94	
Justin W. Gilbert and wife	Jefferson R. R. Co	Thompson	Water right	Right to take water and lay pipe	Nov. 21, "		100	100
Wm. Baker and wife, and Nathaniel Chadwick and wife	Erie R'y Co	Hornellsville	Double track	Strip of land 16½x669	" 30, "		250	250
Frederick Hirst and wife	Erie Int. R'y Co	Buffalo	Right of way and other purposes.	Part of lots 86 and 87, Holland Land Co. Dated 86, 21.42 acres; and 87, 25 acres. Ack'd.	Nov. 1, " June 21, 1875.	.....	11,605	11 605
Jacob Butch and wife	Hugh J. Jewett, Trustee	"	"	Part of lot 86, Holland Co., 1-5th acre. Ack.	Nov. 28, 1874.	.....	100	100
Frederick W. Howell by *Stephen W. Howel, guardian	"	"	Right of way and other purposes					
*Josiah Litchworth and wife; Pascal P. Pratt	Erie Int. R'y Co	"	Right of way and other purposes	" lots 244, 82, 83, and 88, Holland Co., cont'g about 5 acres. Dated. Ack.	Sept. 16, " " 19, "	.....	12,500	12,500
Patrick Gilleck and wife	Erie R'y Co	Hancock	Double track purposes	Part of lots 181, 182, 183, and 184 N. Y. Res'n, 99 feet wide diagonally across 6.17 acres	Dec. 1, "		13,750	13,750
				Strip of land, 373 ft. long and 54ft. wide	" 3, "		25	25

* Note.—To be conveyed to N. Y. C. & H. R R. Co.

Ex. No. 6, &c.—*Continued.*

Grantor.	Grantee.	Town.	For What Bought.	Description.	Date of Deed.	Date of Payment.	Cost.	Est. Value.
Alexander S. Macomb and others..	H. J. Jewett, Trustee and Receiver.....	City of New'k	Right of way	Fourth Ave. and Ogden St. Nos. 184 to 189, also parcel on east side of railroad, Fourth Ave., Passaic St., 16 ft.5in.x245 ft.....	Dec. 23, 1874.		$45,000	$45,000
Isaac Bunheimer and others.....	Erie Int. R'y Co.....	Buffalo	"	Part of lot 79 Holland Land Co., 99x2098, 4.77 acres	Appraised Sept. 28, 1874.		2,027 25	2,027 25
B. F. Slocum and wife.....	Jefferson R. R. Co.....	Arrarat	Right of way	Strip of land, 76x1320	Jan. 13, 1875.		100	100
Joel Salisbury	"	Thompson ...	Depot site	" 220x67.	" 14, "		100	100
Thomas Glynn.....	Erie R'y Co.....	Hornellsville.	Double track . ..	" 16½x1410.....	Feb'y 15, "		170	170
John S. Chase and wife	B N. Y. & E. R. R. Co.	Attica	" purposes.	" 10 ft. wide thro' Chase lot.....	Mar. 9, "		200	200
Geo. H. Nowlen and wife.....	Erie R'y Co.....	Avon	Coal pocket.....	Triangular piece containing 1-10th acre	May 17, "		75	75
Fred'k F. Thomas	H. J. Jewett, Receiver..	Castile.....	Water right.....	Right to lay pipe	June 14, "		1	1
John Thompson.....	" ..	"	"	"	" 14, "		7	7
Benj. Burlingham and Harrison W. Smith, Exs..... Mellissa Post	" ..	"	"	Right to take water and lay pipe.....	" 17, "		34 30	34 30
James Cleland	" ..	Cohocton	"	" "	July 8, "		1	100
Ashael Kellog and wife.....	" ..	Castile.....	Turn table	Strip of land 33x66.....	" 22, "		1	25
Rosetta M. Parmlee	Erie R'y Co.....	Hancock	Gravel pit.....	Irregular piece of land.....	Aug. 2, "		15 66	
Chas. Hoyt and wife.....	"	Mount Hope.	Additional land depot ground ..	Strip of land 377x6.....	" 9, "		175	175
Eli Aspinwall and wife	"	Cohocton	For switch at Bloods.....	Small triangular piece of land.....	" 16, "		1	25
John O'Loughlin.....	H. J. Jewett, Receiver..	Bath.....	Water right.....	Right to take water and lay pipe	" 23, "		50	50
Cornelius M. Banks and Edwin Banks	B. N. Y. & E. R. R. Co.	Campbell	To perfect title...	Strip of land (right of way) 66x3273	" 24, "		1	479
Chas. W. Lamb and wife.....	Erie R'y Co. and H. J. Jewett, Rec'r E. R'y Co	Oakfield	Water right.....	Right to build dam, lay pipe, &c.....	Sept. 11, "		250	250
Timothy Maroney.....	H. J. Jewett, Receiver.	Grove.....	"	Right to lay pipe	Oct. 5, "		15	15
Thomas W. Tripp	" .	"	"	" "	" 14, "		1	1
Jacob Winnemaker.....	B. N. Y. & E. R. R. Co.	Lancaster	Right of way, additional width ..	Additional strip of land north of track, between town line and Lancaster.....	Feb. 16, 1876.		80	80
Geo. B. Waller.....	Pa. Coal Co. & Erie R'y Co.....	Lackawaxen..	Water right.....	Right to take water and lay pipe.....	" 19, "		500	500
Nicholas Rost and wife	Erie Int. R'y Co.....	Buffalo	Right of way.....	Part of lot 74, Holland Co., 2.02 acres.....	Mar. 1, "		844 80	844 80
Jacob Kraemer.....	"	"	"	" " 6.63 "	" 1, "		2,375	2,375
Clarissa A. Wooster.....	Erie R'y Co.....	Hancock	Gravel pit.....	Irregular piece of land, cont'g 4¼ "	" 16, "		15 66	
James Scott and wife.....	H. J. Jewett, Trustee..	Paterson.....	Right of way.....	South Paterson lots, 29, 31, and 32. B'ock A..	June 1, "		1,000	1,000
John A. and W. H. Mallinson.....	Erie R'y Co.....	Hohokus	Depot grounds, Allendale.....	Triangular piece at Allendale, 3-10 acre	" 9, "		1	90
Fenal Dimming and wife	"	Erwin	To perfect title, and add'l land.	Strip of land between Erwin and Addison....	" 14, "		100	100
Chas. Carter	H. J. Jewett, Rec'r.....	Niagara	To perfect title..	Right of way.....	" 14, "		16	16
Joseph Eglinger and wife.....	" E. R'y Co	Mount Hope.	Additional land, 2d track.....	Strip of land 1438x17.....	Sept. 1, "		1	112
Benj. F. Brown, J. Lewis Brown, Caroline L. Brown, Sarah A. B. Green, Emily Brown, Mary E. Brown, Wm. H. Brown, and Lettitia P. Brown.....	H. J. Jewett, Rec'r Erie R'y Co.....	Corning	For a privy site..	Piece of land in rear of Corning depot.....	June 1, "		1	50
Amos Stone and wife	Erie R'y Co.....	Cohocton	Depot grounds, Liberty	Strip of land 10x100.....	Nov. 9, "		200	200
John S. Chase	H. J. Jewett, Rec'r....	Warsaw	Water right.....	Right to take water and lay pipe.....	Dec. 12, "		80	80
Jas. Puntell and wife	"	Buffalo	Additional lands, Erie Int. R'y...	Part of lot 231 Parish tract.....	" 17, "		1,600	1,600
Henry C. Hart	"	Hornellsville.	Additional land for switch	Strip of land 2,765 ft. long, cont'g 1.05.....	Jan. 12, 1878.		350	350

Exhibit No. 7.

Lands in New Jersey on the line of the Paterson, Newark & New York Railroad.

Date of Deed.	Grantor.	Grantee.	Where Situated.	For What Bought.	Description.	Cons.	Est. Value.	Remarks.
March 1, 1872	Edward M. Weiss and wife	Jay Gould, Trustee	City of Paterson	Right of Way	Lot 30, Block A, lot 49 and 50, block C.	$750 00	....	Frederick Farm.
Feb'y 4, 1871	Nath. Tounsend, Sheriff	Jay Gould	Aquackanonk	Depot and Town	Irregular piece of land, 11.61 acres	5,061 66	....	
" "	Same	Same	do.	Depot and Town	Oblong piece of land 73.04 acres	26,562 73	....	Post Farm.
Aug. 5, 1873	James S. Gamble, Sheriff	P. H. Watson, Trustee	Belleville	Right of Way	Land or right of way 274¼ ft. long, 221 7-12 ft. wide	17,943 12	....	Stratenbourgh Tract
May 21, 1873	Sefrina Daily	Same	do.	do.	Strip of 150 ft. x 50 ft., for depot	1 00	....	Daily & Hay agreed to erect a depot on the said lands, May 24, 1873.
" 23, "	Elizb. P. Hay and Silas C. Hay	Same	do.	do.	Strip of 500 ft. x 50 ft., for depot	1 00	....	
" 28, "	Thos. Jerolman and wife	Same	do.	do.	Strip of 100 ft. x 60 ft., for depot	1 00	....	Pass Depot at North Belleville.
August 8, 1873	S. V. C. Van Ransealer	Same	do.	do.	1 piece lot. 48/51, 1 piece 40x300 ft.	3,250 00		
March 9, 1872	Jno. P. Wakeman and wife	John A. Dix, Trustee	City of Newark	Depot and Ground	1 piece 452½ x 45 ft. 1 piece 75 x 45 ft.	35,000 00	...	Improvement of depot
April 8, 1872	James S. and Margt. H. Jackson	Same	do.	Right of Way	1 piece 75 x 45 ft	5,250 00		
May 1, "	Estate of Cath. V. D. Parker	Same	do.	do.	1 piece 84 x 25 (7-100)	3,305 00		
" " "	Marcus L. Ward	Same	do.	do.	1 piece 37½ x 45	2,625 00		
April 5, "	James L. Morris and wife	Same	Belleville	do.	1 piece 50x25 (42-100)	1 00		
May 11, "	Alex. Hayes and wife	Same	do.	do.	....	115 00		
Sept. 1, 1873	Adrian Slp	P. H. Watson, Trustee	Aquackanonk	do.	1 piece 45 x	1 00	....	Centreville Depot.
Nov. 10, "	Same	Same	do.	do.	1 piece 10 x	1 00		do.
May 1, 1872	James Angus and others	John A. Dix, Trustee	City of Paterson	do.	15,642 sq. ft	4,500 00		
" 8, "	Van Idestine Estate	Same	do.	do.	10,004 sq. ft	1,000 00		
June 10, "	Estate of Jos. Warren	Same	do.	do.	....	5,000 00		
Jan. 20, "	Edwin R. Mason and others	Same	do.	do.	100 x	19,000 00		
April 23, "	Anne Crossley and others	Same	do.	do.	1.02 acres	1,480 66		
Sept. 17, 1870	Peter Weller and wife	Jay Gould	Woodside	do.	89-100 acres	5,452 11		
Oct. 10, 1870	Sarah A. and Ely Mellins	Same	do.	do.	56-100 acres	1,980 95		
July 24, 1871	Wm. Joyce	Jay Gould, Trustee	Belleville	do.	1.08 acres	1,382 36		
Feb. 12, 1872	Geo. W. Smith and wife	Same	City of Newark	do.	....	50,193 00		
March 1, 1872	Wm. M. Force and wife	Same	do.	do.	....	25,047 00		
Jan. 23, 1871	Hartman Vreeland	Jay Gould, Trustee	City of Paterson	do.	1.79 acres	8,000 00		
Aug. 20, 1870	Nath. Tounsend, Sheriff	Jay Gould	Aquackanonk	do.	....	4,100 00	....	Sundry parcels of land originally conveyed to Paterson & Newark R. R. Co., and sold by Sheriff under judgment claim. Bought in by J. G.
May 19, 1870	Anthony Q. Keasby and wife	Erie Railway Co.	City of Newark (Passaic Street.)	do.	Lots 253–264 on map of May 1, 1851, made by Dunn & Thompson, Surveyors	9,250 00		

Lands in New Jersey on the line of the Newark & Hudson Railroad.

Oct. 21, 1873	Newark Land Company	P. H. Watson, Jr.	Kearney	Right of Way	1.63 acres	$4,830 00	....	Depot purposes.
" " "	Same	Same	do.	do.	57 100 acres	855 00	....	do.

Ex. No. 7—(*Continued*). *LANDS IN NEW JERSEY.*

Date of Deed.	Grantor.	Grantee.	Location.	For What Bought.	Description.	Cost.	Est. Value.	Remarks.
			Pen Horn Creek.					
Aug. 21, 1868	Edward Evans and wife	Jay Gould	Jersey City	Petroleum Depot	39.88 acres	$19,665 00		
" 29, "	Same	Same	do.	do.	5 do.	2,500 00		
Sept. 3, "	Louisa Burdett and husband	Same	do.	do.	9.31 do.	3,650 00		
" 5, "	Garret Vreeland and wife	Same	do.	do.	21 do.	6,300 00		
" 15, "	John Cook and wife	Same	do.	do.	10.50 do.	3,486 00		
" 15, "	Same	Same	do.	do.	10 do.	3,320 00		
" 15, "	Same	Same	do.	do.	10 do.	3,320 00		
" 15, "	Same	Same	do.	do.	11.58 do.	3,844 56		
" 15, "	Same	Same	do.	do.	3.50 do.	1,162 00		
Oct. 1, "	Valentine Oil Company	Same	do.	do.	5.85 do.	3,200 00		
Aug. 21, "	Jno. Kirkpatrick and wife	Same	North Bergen	do.	2.75 do.	756 25		
" 29, "	Edward Evans and wife	Same	do.	do.	8.25 do.	4,125 00		
" 29, "	Same	Same	do.	do.	72 02 do.	21,600 00		
Sept. 15, "	John Cook and wife	Same	do.	do.	1 do.	367 44		
Oct. 1, "	Valentine Oil Co	Same	do.	do.	114.91 do.	61,800 00		
			Weehawken Branch Connection.					
April 1, 1869	Geo. A. Elliott and wife	Jay Gould, Trustee	Jersey City	Right of Way	3 parcels, Monmouth Street, 1 cont. 1,344 sq. ft. 1 " 8,700 " 1 " 1,695 "	5,834 50		
March 26, 1870	Hoboken Land Impt. Co	Same	do.	do.	3 parcels, Monmouth Street, 1 cont. 3,570 sq. ft. 1 " 7,280 " 1 " 875 "	1 00		
			Laundry Property.					
Dec. 18, 1872	Lucy D. Fisk	P. H. Watson	Jersey City	Washing waste	West-End Bergen Tunnel, 4 acres	Unknown		
			Weehawken Docks Property.					
Oct. 31, 1868	Weehawken Docks	Jay Gould, Trustee	Weehawken	Petroleum Depot	....	1,620,000		
			Hackensack.					
May 1, 1869	Hackensack & New York R. R Co.	Erie Railway Company	Town of New Barbadoes.	Right of Way	Lot southerly side of Paterson & Hudson turnpike, cont. ¼ acre	1,500 00		

Exhibit No. 8.

Grand Opera House Property—

Opera House and Erie Offices.

Dwelling, 311 West Twenty-third Street.

"	313	"	"
"	315	"	"
"	317	"	"
"	319	"	"
"	321	"	"
"	323	"	"
"	331	"	"
"	347	"	"
"	302 West Twenty-fourth Street.		
"	304	"	"
"	306	"	"
"	308	"	"
"	310	"	"
"	312	"	"
"	314	"	"

Leased Lots from Est. of Clement C. Moore—

22d Street, between	11th and 13th Avenues,	Lots	840	to	848	.....	9
13th Avenue, "	22d and 23d Streets,	"	849	"	856	.....	8
23d Street, "	11th and 13th Avenues,	"	857	"	866	.....	10
11th Avenue, "	22d and 23d Streets,	"	834	"	839	.....	6
23d Street, East of 11th Avenue, Popham Lots,		"	870	"	877	.....	8
24th Street, East of 11th Avenue,		"	896	"	897	.....	2
							—
							43

Leased Lots from Matthew Kane—

24th Street, East of 11th Avenue,	Lots	893	to	895	.....	3
						—
Total					.....	46

Mayor, Aldermen, &c., to Erie Railway Co.—

Lease of Block bounded by Reade, Washington, Duane and West Streets, known as Erie Building.

Term of Lease, 20 years from Nov. 1st, 1868, $11,250 per annum.

EXHIBIT No. 9.—SCHEDULE "A."

Securities owned by the Erie Railway Company, transferred to the custody of Hugh J. Jewett, Receiver, May 27, 1875.

When Acquired.	Description of Securities.	Par Value.	Estimated Cash Value on May 27, 1875.	Remarks.
	STOCKS.			
During 1868	Towanda Coal Company	$450,000	None	Unsaleable; valuable only for organization purposes.
" 1873	Glenwood " "	987,900	None	Same as Towanda Coal Stock.
During 1870, 1873, and 1875.	National Stock Yard Company	232,200	None	
During 1870, 1873, 1874 " 1876 to 1878	Suspension Br. & Erie Junc. R.R. Co.	175,300	None	
" 1873	Erie Ry. Pref. Stock Div'd Certificates.	39,549	None.	
" 1873 and 1875	Jefferson Car Co.	278,400	None	Unsaleable; represents Rolling Stock now in use.
" 1873	Pennsylvania Transport Co.	450,600	None	Unsaleable; intrinsic value unknown. Probably small.
" 1873	Nyack and North'n R.R. Co.	16,100	None	
" 1873	Burk'a Locomotive Works	99,000	None	Same as Towanda.
" 1873	U. S. Towboat Co.	7,500	$2,146 07	
" 1873	Northern R.R. of New Jersey	900	495 00	
" 1873	Lackawanna & Susq. Coal & Iron Co.	40,000	6,000 00	
" 1870 and 1873	Jefferson Railroad Co.	2,044,800	None	Same as Towanda.
" 1873	Compressed Air Safety Brake Co.	30,500	None.	
" 1870 and 1872	Erie & Atlantic Sleeping Coach Co.	153,800	153,800 00	
" 1869	Hoboken & Jersey City Horse-Car R.R.	6,000	2,400 00	
" 1869	Harbor Wrecking Co.	2,000	None.	
" 1869 and 1874	Pavonia Horse Railroad Co.	44,000	None	Same as Towanda.
Prior to 1873	Monticello & Port Jervis R.R.	10,000	None.	
During 1869, 1874 & 1875	Union Steamboat Co.	869,000	869,000 00	
" 1870	Union Dry Dock Co.	75,000	75,000 00	
" 1868	Reno Company, Preferred	5,128	2,500 00	
Prior to 1873	Erie Railway, Preferred	7,475	2,243 50	
" to 1873	Walkill Valley R.R.	19,900	None.	
During 1873 and 1874	Buffalo, N. Y. and Erie R.R.	575,900	575,900 00	
Prior to 1873	International Bridge Co. Certificate	4,140	4,140 00	
During 1873	Southern Central R.R.	89,900	8,990 00	
" 1867 and 1868	Buffalo, Bradf. & Pittsburg R.R.	2,016,800	None	Same as Towanda.
Prior to 1873	Paterson, Newark and N. Y. R.R.	250,000	None	
May 9, 1874	New York & New England	100,000	25,000 00	
Nov. 20, 1874	Erie Railway, Common	200	30 00	
Feb. 15, 1875	Union Car Co.	330,500	None	Unsaleable; represents Rolling Stock now in use.
	To which add the undermentioned Stocks owned by the Erie Railway Co., May 27, 1875, but for which Certificates were issued subsequent to that date.			
During 1872	Newark & Hudson R.R.	249,800	None	Same as Towanda.
Prior to 1873	Long Dock Co.	800,000	None	
During 1873	Hillside Coal and Iron Co.	999,300	None	
" 1873	North West'n Mining & Exch. Co.	498,600	None	
" 1867 and 1868	Buff., Brad. & Pitts. R. R.	900	None	
" 1873 and 1874	Erie International Ry.	50,000	None	
	BONDS.			
From 1869 to 1873	Towanda Coal Co., 2d m'tge.	244,000	None	Have offsetting value on account of Debt of Erie for Coal.
During 1870 and 1873	Glenwood " " 1st "	499,000	None	
" 1873	Glenwood " " 2d "	499,000	None.	
" 1873	Glenwood " " Coupons, Feb. 1, '72.	12,285	None.	
From 1870 to 1872	National Stock Yard Co.	655,000	327,500 00	
" 1870 to 1871	Suspension Bridge & Erie Junc. R.R.	35,000	17,500 00	
During 1870	La Mont Mining and R.R.	30,000	None.	
" 1870	New York and Boston Express Co.	170,000	None.	
" 1871	Mariposa Company	1,000	None.	
" 1873	Nyack and Northern R.R.	3,000	1,500 00	
" 1868	Boston, Hartford & Erie R.R. (gtd.)	639,000	157,250 00	
Prior to 1873	Buffalo, Bradford & Pitts. R.R.	185,000	92,500 00	
" 1873	Long Dock Co.	11,000	11,000 00	
" 1873	Paterson and Newark R.R.	235,500	117,750 00	
During 1872	Newark and Hudson R.R.	250,000	125,000 00	
" 1873	New York and Penn. Blue Stone Co.	15,000	None.	
" 1870	Jefferson R.R.	714,000	571,200 00	
" 1870	Newburg and New York R.R.	166,000	83,000 00	
" 1874	Buffalo, N. Y. & Erie, 1st Consol'd.	49,000	41,650 00	
Prior to 1873 and in 1874	Pavonia Horse R.R.	91,500	None.	
Feb 15, 1875	New Jersey and New York Ry.	34,000	17,000 00	
During 1874	Montclair Ry, 2d mortgage	100,000	5,000 00	
	Total	$16,633,772	$3,295,493 57	

EXHIBIT NO. 9—*Continued.* SCHEDULE "B."

Securities acquired for the Estate of the Erie Railway Company by Hugh J. Jewett, Receiver, from May 27, 1875, to June 1, 1878.

WHEN ACQUIRED.	DESCRIPTION OF SECURITIES.	PAR VALUE.	COST.	REMARKS.
July 7, 1875.	National Stock Yard Co. stock.....	$182,200	$5,000	
August, "	National Stock Yard Co. stock.....	362,300	53,000	And interest.
Dec. 29, "	Pavonia Horse R. R. bonds	1,000	750	
March 1, 1876.	Buffalo, New York & Erie 2d mt. bonds.	237,000	237,000	And interest.
Feb'y 8, "	Northern Central R'y 7% income bonds...	350,000	None.	Final settlement with Jay Gould.
" " "	Susp. Bridge & Erie Junc. stock..... ...	50,000	None.	
" 21, "	National Stock Yard Co. bonds	10,000	10,000	And interest.
" " "	National Stock Yard Co. stock.....	5,000	5,000	
March 8, "	Northern Central R'y 2d mort. 5% bonds .	350,000	None.	Rec'd in exchange for Northern Central R'y 7% inc. b'ds.
" 21, "	Brooks' Locomotive Works stock.....	99,000	None.	Rec'd in settlement with estate of Jas. Fisk, Jr.
April 11, "	Suspension Bridge & Erie Junc stock...	33,500	3,863 32	
" " "	Union Steamboat Co. stock	35,000	24,250	
" 15, "	Union Steamboat Co. stock	40,000	29,200	
May 3, "	Union Steamboat Co. stock	30,000	21,600	
" 2 & 13, "	Buffalo, New York & Erie 2d mort. bonds.	8,000	8,000	And interest.
" 12, "	Susp. Bridge and & Erie Junc. stock.....	3,200	480	
June 6, "	Union Steamboat Co. stock.....	10,000	7,200	
July 3, "	Buffalo, New York & Erie 2d mort. bonds.	5,000	5,000	And interest.
August 2, "	Buffalo, New York & Erie 2d " "	5,000	5,000	
Sept. 13, "	Susp. Bridge & Erie Junc. stock.....	49,700	7,455	
" 18, "	Union Steamboat Co. stock	10,000	7,200	
" 25, "	Susp. Bridge & Erie Junc. stock.....	17,000	2,550	
Nov. 13, "	Susp. Bridge & Erie Junc. stock.....	16,000	2,400	
" " "	Glenwood Coal Co. 1st mort. bond	1,000	375	
" " "	Glenwood Coal Co. 2d "	1,000	375	
Feb'y 1, 1877.	Susp. Bridge & Erie Junc. stock	17,500	2,362 50	
" " "	U. S. Express Co. stock....	500,000	None.	Received in accordance with contract.
" 14, "	Susp. Bridge & Erie Junc. stock	16,000	2,240	
April 24, "	Montclair & Greenwood Lake R. R. Stock	100,000	None.	Rec'd in exchange for $100,000 Montclair R'y 2d mt. bds.
June 15, "	Susp. Bridge & Erie Junc. stock.....	25,600	3,840	
" 20, "	Paterson & Newark R. R. bonds.....	10,000	None.	Received as part of a settlement with R. B. Catherwood
Sept. 18, "	Susp. Bridge & Erie Junc. stock	33,500	5,025	
Oct. 5, "	Susp. Bridge & Erie Junc. stock.....	16,000	2,400	
Jan'y 8, 1878.	Paterson & Newark R. R. bonds.....	27,000	22,950	
April 3, "	Susp. Bridge & Erie Junc. stock...	17,000	2,550	
" 11/13, "	Paterson & Newark R. R. bonds	202,000	202,000	And interest.
" 30, "	Paterson & Newark R. R. bonds	10,000	10,000	
1878.	Bergen County R'y stock.....	3,000	None.	Received in settlement of advances.
	Total.....	$2,888,500	$689,065 82	

EXHIBIT NO. 9—*Continued.* SCHEDULE "C."

Securities belonging to the Estate of the Erie Railway Company, disposed of by Hugh J. Jewett, Receiver, from May 27, 1875, to June 1, 1878.

When Sold.	Description of Securities.	Par Value.	Cash Proceeds.	Remarks.
July 13, 1875.	U. S. Towboat Co.'s stock	$7,500	$1,583 57	
" 29, "	Jefferson Car Co. stock	278,400	None.	Delivered to Jefferson Car Co., in part payment of judgment obtained.
Dec. 16, "	Northern Railroad of New Jersey	900	495	
Jan. 4, 1876.	New York & Boston Express Co. bonds	170,000	None.	Written off as valueless, as per letter of Auditor.
" 4, "	Union Car Co.'s stock	330,500	None.	Closed into Equipment account, as per Auditor's letter.
" 29, "	Long Dock Co. bond	1,000	1,000	
March 7, "	Northern Central 7% income bonds	350,000	None.	Exchanged for $350,000, North. Central 5% 2d mortgage bonds.
June 23, "	Brooks Locomotive Works stock	198,000	None.	As per agreement of May 25, 1876.
July 22, "	Hooken & Jersey City Horse Car stock	6,000	2,400	
August 21, "	Long Dock Co. bonds	10,000	10,500	
" 26, "	Nyack & Northern Railroad bonds	3,000	1,800	
Nov. 17, "	International Bridge Certificate	4,140	4,140	
March 2, 1877.	Buffalo, N. Y. & Erie 2d mortgage bonds	255,000	250,800	
" 2, "	Buffalo, N. Y. & Erie consol'd bands	49,000		
April 24, "	Montclair Railway 2d mortgage bands	100,000	None.	Exchanged for $100,000, Montclair & Greenwood Lake R. R. stock.
Oct. 10, "	Erie Railway preferred stock	65	16 90	
	Total	$1,763,505	$272,735 47	

EXHIBIT NO. 9—*Continued.* SCHEDULE "D."

Securities owned by the Estate of the Erie Railway Company in the custody of Hugh J. Jewett, Receiver, on the 1st day of June, 1878.

When Acquired.	Description of Securities.	Par Value.	Estimated Cash Value on June 1, 1878.	Remarks.
	STOCKS.			
During 1868	Towanda Coal Company	$450,000	None.	Unsalable; valuable only for organization purposes.
" 1873	Glenwood " "	997,900	None.	Same as Towanda Coal Stock.
" 1870, 1873 & 1875.	National Stock Yard Company	781,700	None.	
" 1870, 1873, 1874, 1876 to 1878	Susp. Bridge and Erie Junc. R. R.	470,300	None.	
" 1873	Erie R'y pref. stock div. cert.	39,549	None.	
" 1873	Pennsylvania Transport Co.	450,600	None.	Unsalable; intrinsic value unknown; probably small.
" 1873	Nyack and Northern R. R.	16,100	None.	
" 1873	Lackawanna & Susq. Coal and Iron Co.	40,000	None.	
" 1870 and 1873	Jefferson Railroad Co.	2,044,800	None.	Same as Towanda.
" 1872	Compressed Air Safety Brake Co.	30,500	None.	
" 1870 and 1872	Erie & Atlantic Sleeping Coach Co.	153,800	153,800	
" 1869	Harbor Wrecking Co.	2,000	None.	
Prior to 1873	Monticello & Port Jervis R. R.	10,000	None.	
During 1869 and 1874	Pavonia Horse Railroad Co.	44,000	None.	Same as Towanda.
" 1869, 1874 to 1876.	Union Steamboat Co.	994,000	994 000	
" 1870	Union Dry Dock Co.	75,000	75,000	
" 1868	Reno Company, preferred	5,123	2,500	
Prior to 1873	Erie Railway preferred stock	7,410	2,223	
" 1873	Walkill Valley R. R.	19,900	None.	
During 1873 and 1874	Buffalo, New York & Erie R'y	575,900	575,900	
" 1873	Southern Central R. R.	89,900	None.	
" 1867 and 1868	Buff., Bradf. & Pitts. R. R.	2,017,700	None.	Same as Towanda.
Prior to 1873	Paterson, Newark & N. Y. R. R.	250,000	None.	
May 9, 1874	New York & New England R. R.	100,000	12,000	
Nov. 20, 1874	Erie R'y common	200	25	
During 1872	Newark & Hudson R. R.	249,800	None.	Same as Towanda.
Prior to 1873	Long Dock Co.	800,000	None.	
During 1873	Hillside Coal & Iron Co.	999,300	None.	
" 1873	North Western Mining and Exch. Co.	498,000	None.	
" 1873 and 1874	Erie International R'y	50,000	None	
Feb'y 1, 1877	U. S. Express Co.	500,000	240,000	
April 24, 1877	Montclair & Greenwood Lake R'y	100,000	None.	
During 1878	Bergen County R'y	3,000	None.	Same as Towanda.
		$12,851,482	$2,061,448	
	BONDS.			
From 1869 to 1873	Towanda Coal Co. 2d mortgage	244,000	None.	Have offsetting value on account of debt of Erie for coal.
During 1870, 1873 & 1876.	Glenwood " 1st "	500,000	None.	
" 1873 and 1876	Glenwood " 2d "	500,000	None	
" 1873	Glenwood " coupons, Feb. 1, 1872.	12,265	None.	
From 1870 to 1872 & 1876.	National Stock Yard Co.	665,000	332,500	
During 1870 and 1871	Susp. Bridge & Erie Junc. R. R.	35,000	17,500	
" 1870	La Mont Min. R. R.	30,000	None.	
" 1871	Mariposa Co.	1,000	None.	
" 1868	Boston, Hartf. & Erie R. R. (guar'teed)	629,000	75,480	
Prior to 1873	Buff., Bradf. & Pitts. R. R.	185,000	92,500	
" 1873 and in 1878.	Paterson & Newark R. R.	484,500	242,250	
During 1872	Newark & Hudson R. R.	250,000	125,000	
" 1873	New York & Penn. Blue Stone Co.	15,000	None.	
" 1870	Jefferson R. R.	714,000	571,200	
" 1870	Newburgh & New York R. R.	166,000	83,000	
Prior to 1873, in 1874 and 1875	Pavonia Horse R. R.	92,500	None.	
Feb'y 15, 1875	New Jersey & New York R. R.	34,000	850	
March 8, 1876	Northern Central 2d mort. 5%	350,000	140,000	
	Total	$17,758,767	$3,741,728	

EXHIBIT No. 9—*Continued.* SCHEDULE "E."

Securities acquired by the Erie Railway Company, from February 4, 1874, to May 26, 1875.

DATE OF ENTRY.	DESCRIPTION OF SECURITIES.		PAR VALUE.
February 13, 1874	1 Pavonia Horse Railroad	Bond	$500 00
March 7, "	2 Pavonia Horse Railroad	Bonds	1,000 00
April 22, "	Buffalo, New York & Erie Railroad	Stock	1,000 00
" " "	1 Pavonia Horse Railroad	Bond	500 00
May 13, "	Union Steamboat Company	Stock	5,000 00
June 24, "	4 Pavonia Horse Railroad	Bonds	2,000 00
July 14, "	Suspension Bridge & Erie J	Stock	5,800 00
" " "	71 Pavonia Horse Railroad	Bonds	35,500 00
" " "	Pavonia Horse Railroad	Stock	10,000 00
August 11, "	5 Pavonia Horse Railroad	Bonds	2,500 00
September 3, "	Suspension Bridge & Erie J	Stock	25,000 00
November 20, "	Erie Railway Company	Common Stock	200 00
February 15, 1875	Union Steamboat Company	Stock	101,200 00
April 29, "	Jefferson Car Company	Stock	100,000 00
	Total		$290,200 00

N. B.—This statement does not include 3,305 shares of Union Car Co., entered as received, on May 19, 1874 and February 15, 1875, respectively. The cars against which the stock was issued have long ago been closed into Equipment Account of the Erie Railway Co.; the stock, of course, is valueless, and has been written off.

EXHIBIT NO. 9—*Continued.* RECAPITULATION.

Estimated Cash Value.		Par Value.
	Securities owned by the Erie Railway Company transferred to the custody of Hugh J. Jewett, Receiver, on 27th of May, 1875—	
$3,295,493 57	*As per Schedule A*.....	$16,633,772 00
	Securities acquired for the Estate of the Erie Railway Company by Hugh J. Jewett, Receiver, from 27th of May, 1875, to 1st of June, 1878—	
	As per Schedule B.....	2,888,500 00
		$19,522,272 00
	Securities belonging to the Estate of the Erie Railway Company disposed of by Hugh J. Jewett, Receiver, from 27th of May, 1875, to 1st of June, 1878—	
	As per Schedule C.....	$1,763,505 00
	Securities owned by the Estate of the Erie Railway Company in the custody of Hugh J. Jewett, Receiver, on 1st of June, 1878—	
3,741,728 00	*As per Schedule D*.....	17,758,767 00

Exhibit No. 10.

Securities Outstanding on May 26, 1875.

With	Description of Securities Pledged.	Par Value.	Sums paid by Receiver to Redeem Securities.
H. J. Jewett	National Stock Yard Company ... Bonds	$100,000 00	$33,333 33
S. L. M. Barlow	National Stock Yard Company ... "	50,000 00	26,832 29
	Nyack & Northern Railroad ... "	3,000 00	
	Long Dock Company ... "	1,000 00	
	Erie Railway Company, 2d Consolidation ... "	40,000 00	
	Suspension Bridge and Erie Junction Railroad ... "	35,000 00	
	Jefferson Railroad ... "	50,000 00	
Pennsylvania Coal Co.	Erie Railway ... Preferred Stock	5,800 00	105,551 39
	Buffalo, New York & Erie Railroad ... " "	75,900 00	
	Erie Railway, 2d Consols ... Bonds	100,000 00	
Duncan, Sherman & Co.	Boston, Hartford & Erie Railroad ... "	100,000 00	16,865 39
T. B. Wallace & Co.	Boston, Hartford & Erie Railroad ... "	63,000 00	122,285 12
	Cleveland, Colorado, Cinn. & Indiana Railroad ... Stock	300,000 00	
New York Guaranty and Ind. Co.	Buffalo, Bradford & Pittsburg Railroad ... Bonds	50,000 00	201,400 00
	Newark & Hudson Railroad ... "	50,000 00	
	Jefferson Railway ... "	289,000 00	
	Erie & Atlantic Sleeping Coach Company ... Stock	41,700 00	
	Erie, 2d Consolidation ... Bonds	100,000 00	
E. D. Morgan, on Bank of Commerce	Buffalo, New York & Erie Railroad ... Stock	300,000 00	155,604 17
National City Bank	Buffalo, New York & Erie Railroad ... "	200,000 00	104,430 55
Marine National Bank	Jefferson Railroad ... Bonds	150,000 00	50,115 07
	Cleveland, Colorado, Cinn. & Indiana Railroad ... Stock	24,300 00	
Fourth National Bank	Long Dock Company ... Bonds	10,000 00	100,000 00
	Paterson & Newark Railroad ... "	55,500 00	
	Jefferson Railroad ... "	175,000 00	
	Newburgh & New York Railroad ... "	91,000 00	
Drexel, Morgan & Co.	Paterson & Newark Railroad ... "	115,000 00	495,000 00
	Newark & Hudson Railroad ... "	200,000 00	
	Newburgh & New York Railroad ... "	75,000 00	
	Erie & Atlantic Sleeping Coach Company ... Stock	112,100 00	
	Cleveland, Colorado, Cinn. & Indiana Railroad ... "	1,100,000 00	
		$4,062,300 00	$1,411,417 31

Exhibit No. 11.

*More full Statement of Real Property in New York City than Ex. 8; also Schedule accompanying it—Map.**

Grantor.	Grantee.	When Acquired.	Nature of Title.	Terms.	Description and Situation.	How now Occupied.
Benj. Moore, Executor of C. C. Moore.	Erie Ry. Co.	July 1, 1864.	Leasehold. 21 years, from July 1, 1864.	Rental, $5,325, to Nov. 1, 1880; thereafter, $5,850 and taxes. Annual penalty, $1,750, for non-erection of buildings.	21 Lots, bet. 22d and 23d Sts. and 11th and 13th Avenues, Nos. 843 to 863; together with Wharf and Bulkhead in front of lots.	All the Lots leased for Lumber Yard.
Thomas Bell, Lessee of Moore, &c.	Do.	August 1, 1873.	Leasehold (assigned). Cons., $20,000. Lots 834-9. Term expires July 1, 1887. Lots 840-2. Term expires June 1, 1881. Lots 864-6. Term expires June 1, 1881.	Rental: Lots 834-5, $500; " 836-9, 1,000; " 840-2, ; " 864-6, 900 } $2,400 and taxes.	Sixteenth Ward, N. Y. City. 12 Lots, bet. 22d and 23d Sts. and 11th and 13th Avenues, Nos. 834 to 842 and 864 to 866.	Do.
James Fisk, Jr., Assignee of W. S. Popham, Lessee of Moore.	Do.	May 2, 1870.	Leasehold (assigned). Cons., $41,000. 21 years, from May 1, 1856.	Rental, $1,500 and taxes.	8 Lots on 23d St., bet. 10th and 11th Avenues, Nos. 870 to 877. 2 Lots on 24th St., bet. 10th and 11th Avenues, Nos. 896 and 897, which are covered by Stables of Erie Baggage Express.	Lots 870 and 877 vacant. Lots 896 and 897 covered by Stables of Erie Baggage Express.
Jay Gould and Lucy D. Fisk.	P. H. Watson, Trustee.	Dec. 18, 1872.	Fee simple. Nominal condition, $1,200,000.	This property was transferred in accordance with settlement made with Gould Dec., 1872, restoring to Erie Railway Co. property charged to him.	The Grand Opera House Building, fronting on 8th Avenue and 23d and 24th Streets.	Corner Store, Store on 8th Ave., Opera House, } Leased to various parties. Offices all vacant.
Mathew Kane.	Erie Ry. Co.	May 1, 1876.	Leasehold. Term expires May 1, 1880.	Rental, $3,500.	3 Lots on 24th St., bet. 10th and 11th Avenues, Nos. 542, 544 and 546 W. 24th St., with Stable thereon.	Occupied by Stables of Erie Baggage Express.
Jay Gould, and Lucy D. Fisk, Assignee of Pike, &c.	P. H. Watson.	Dec. 18, 1872.	Leasehold (assigned.) Term expires May 1, 1885.	Rental, $175 and taxes.	Lot, 20 feet 10 inches front, on 23d St. Covered by Grand Opera House building. (Lease No. 11.)	Covered by portion of Grand Opera House building.
Do.	Do.	Do.	Do.	Do.	Lot, 20 feet 10 inches front, on 23d St. Covered by dwelling house, No. 311 W. 23d St. (Lease No. 12.)	R. C. Brown. $900.
Do.	Do.	Do.	Do.	Do.	Lot, 20 feet 10 inches, on 23d St. Covered by dwelling house No. 313 W. 23d St. (Lease No. 13.)	C. G. Barber.
Do.	Do.	Do.	Do.	Do.	Lot, 20 feet 10 inches front, on 23d St. Covered by dwelling house No. 315 W. 23d St. (Lease No. 14.)	Mr. L. B. Moore. $1,000.
Do.	Do.	Do.	Do.	Do.	Lot, 20 feet 10 inches front, on 23d St. Covered by dwelling house No. 317 W. 23d St (Lease No. 15.)	J. C. Delaney. $1,100.
Do.	Do.	Do.	Do.	Do.	Lot, 20 feet 10 inches, on 23d St. Covered by dwelling house No. 319 W. 23d St. (Lease No. 16.)	S. D. Fleming. $1,100.

Jay Gould, and Lucy D. Fiske, Assignee of Pike, &c.	P. H. Watson.	Dec. 16, 1872.	Leasehold (assigned). Term expires May 1, 1885.	Rental, $250 and taxes.	Lot, 30 feet front, on 23d St. Covered by dwelling house No. 321 W. 23d St. (Lease No. 17.)	R. M. C. Graham. $1,400.
Do.	Do.	Do.	Do.	Rental, $210 and taxes.	Lot, 25 feet front, on 23d St. Covered by dwelling house No. 323 W. 23d St. (Lease No. 18.)	Geo. W. C. Clark. $1,100.
Do.	Do.	Do.	No.	Rental, $85 and taxes.	Lot, 19 feet front, on 24th St. Covered by dwelling house No. 302 W. 24th St. (Lease No. 25.)	C. Bissel. $500.
Do.	Do.	Do.	Term expires May 1, 1884.	Rental, $80 and taxes.	Lot, 21 feet front, on 24th St. Covered by dwelling house No. 304 W. 24th St. (Lease No. 7.)	E. F. Godell. $500.
Do.	Do	Do.	Do.	Rental, $85 and taxes.	Lot, 21 feet front, on 24th St. Covered by dwelling house No. 306 W. 24th St. (Lease No. 6.)	M. H. Haffey. $600.
J. Gould, & Lucy D. Fiske, Assig'e of Cochran, &c.	Do.	Do.	Do.	Rental, $80 and taxes.	Lot, 21 feet front, on 24th St. Covered by dwelling house No. 308 W. 24th St. Lease No. 5.)	O. C. Collier. $700.
Assignee of Catharine A. Adec	Do.	Do.	Do.	Do.	Lot, 21 feet front, on 24th St. Covered by dwelling house No. 310 W. 24th St. (Lease No. 4.)	J. Macdonald. $600.
Assignee of Fred'k C. Rohrs.	Do.	Do.	Term expires Aug. 1, 1884.	Do.	Lot, 21 feet front, on 24th St. Covered by dwelling house No. 312 W. 24th St (Lease No. 3.)	A. M. Carpenter. $600.
Assignee of Shepard.	Do.	Do.	Term expires Nov. 1, 1884.	Rental, $85 and taxes.	Lot, 21 feet front, on 24th St. Covered by dwelling house No. 314 W. 24th St. (Lease No. 2.)	P. Harrison, $775.
Assignee of Pike, &c.	Do.	Do.	Term expires May 1, 1885.	Rental, $71.12 and taxes.	Lot, 16 feet 6 inches, on 24th St. Covered by portion of theatre—Grand Opera House.—No. 318 W. 24th St. (Lease No. 22.)	Covered by portion of Grand Opera House building.
Do.	Do.	Do.	Do.	Rental, $140 and taxes.	Lot, 25 feet front, on 24th St. Covered by portion of theatre, No. 322 W. 24th St. (Lease No. 21.)	Do.
Do.	Do.	Do.	Do.	Do.	Lot, 25 feet front, on 24th St. No. 330 W. 24th St. (Lease No. 29.)	Do.
Do.	Do.	Do.	Term expires Nov. 1. 1884.	Rental, $364 and taxes.	Lot, 50 feet front on 23d St., and 8 on 24th St. Dwelling house, &c., Nos. 347 W. 23d St. and 334½ W. 24th St. (Lease No. 8.)	E. Coons. $1,200.
Lucy D. Fiske.	H. J. Jewett.	August 5, 1875.	Fee. Cons., $1. Subject to mortgage to Dinsmore, &c.	....	No. 331 West 23d St. Dwelling house. 19 feet four inches. Front on 23d St.	Vacant.
Charles H. Knox, Referee.	H. J. Jewett, Receiver.	August 21, 1875.	Fee. Cons., $15,250. Amount purchase on foreclosure and mortgage.	....	Same Premises.	Do.
lty of New York.	New York & Erie R. R. Co.	July 1, 1850.	Leasehold. Term expires Nov. 1, 1888.	Rental, $11,250.	Block of Ground—bounded by West, Washington, Duane and Reade Sts.—about 270 x 70 feet. Covered by buildings—the larger portion being the present General Offices of the Company.	3 Stores rented on Reade St., and 1 Store on Duane St. Balance used for General Offices, Stores, Express connected with Erie.

EXHIBIT No. 12.

Securities held as Collaterals.

WHEN ACQUIRED.	DESCRIPTION OF SECURITIES.	PAR VALUE.	ESTIMATED CASH VALUE.	REMARKS.
After August, 1874, and prior to May 26, 1875	Cleveland, Columbus, Cincinnati & Indianapolis R. R. stock	$1,424,300		
December, 1874.	New York & New Jersey Provision Dealers' Association stock	20,000	.....	Advanced $20,063 on this stock.
	Atlantic & Great Western R. R.: 1st mortgage Ohio Div. currency coupons, $76,951; 2d " gold coupons 83,860	160,811		
During 1874....	1,313 Atlantic & Great Western R. R. Western Extension certificates, of £100 each	656,500	.....	Received through Mr. John A. C. Gray.
	Total	$2,261,611		

Exhibit No. 13.

Appendix to Schedule "A." (Ex. 9.)

Boston, Hartford & Erie Railroad Coupons.	Par Value.
Acquired prior to February 4, 1874.	
1996 Coupons, No. 5, due January 1, 1870	
1991 " No. 6, due July 1, "	
1980 " No. 7, due January 1, 1871	
1968 " No. 8, due July 1, "	
1968 " No. 9, due January 1, 1872	
1932 " No. 10, due July 1, "	
1932 " No. 11, due January 1, 1873	
1932 " No. 12, due July 1, "	
1932 " No. 13, due January 1, 1874	
17,621 Coupons, @ $35 00	$616,735 00
Acquired from February 4, 1874, to May 26, 1875.	
1932 Coupons, No. 14, due July 1, 1874	
1932 " No. 15, due January 1, 1875	
3,864 Coupons, @ $35 00	135,240 00
Acquired from May 26, 1875, to June 1, 1878.	
832 Coupons, No. 5, due January 1. 1870	
832 " No. 6, due July 1, "	
832 " No. 7, due January 1, 1871	
832 " No. 8, due July 1, "	
832 " No. 9, due January 1, 1872	
832 " No. 10, due July 1, "	
832 " No. 11, due January 1, 1873	
12 " No. 12, due July 1, "	
12 " No. 13, due January 1, 1874	
12 " No. 14, due July 1, "	
12 " No. 15, due January 1, 1875	
444 " No. 16, due July 1, "	
444 " No. 17, due January 1, 1876	
444 " No. 18, due July 1, "	
444 " No. 19, due January 1, 1877	
444 " No. 20, due July 1, "	
400 " No. 21, due January 1, 1878	
4,980 Coupons, @ $35	174,300 00
	$926,275 00

Exhibit No. 14.

Securities Held in Trust.

When Acquired.	Description of Securities.	Par Value.	Estimated Cash Value	Remarks.
Prior to 1873.	Avon & Genesee & Mt. Morris R. R. stock.....	$30,750 00	....	This stock is held in trust, subject to the terms of the lease of the Avon, Genesee & Mt. Morris R. R. to the Erie Railway Co., dated Dec. 27, 1871.
Prior to 1873.	Rochester & Genesee Valley R. R. stock	149,400 00	....	This stock has never been in possession of the Erie Railway Co. It is held in trust by C. G. Miller and others, and is to be delivered to the Erie Railway Co. only, after the Erie Railway Co. has performed certain things described in the lease of the Rochester & Genesee Valley R. R. to the Erie Railway Co.
		$180,150 00		

Exhibit No. 15.

Map of Property in City of Buffalo, N. Y., transmitted with Report, original Exhibits, &c., to the Court.

EXHIBIT NO. 21 (a).

Comparison between Balance Sheets, North Western Mining and Exchange Co., May 31, 1875, *and April* 30, 1878.

	May 31, 1875.	April 30, 1878.	INCREASE.	DECREASE.
Expenses	$10,435 33	$180,295 42	$169,860 09	
Income	6,700 43	168,335 68	161,635 25	
Deficit	3,734 90	11,959 74	8,224 84	
ASSETS.				
Cash	....	5,534 21	5,534 21	
Construction	99,456 07	50,805 16	...	48,650 91
Supplies	534 69	2,005 35	1,470 66	
Mine Stock and Tools	3,580 58	11,097 12	7,516 54	
Real Estate	1,034,028 90	1,134,028 90	100,000 00	
Real Estate Expenses	24,259 39	24,284 09	24 70	
Interest on Land Payments	69,042 11	373,634 24	304,592 13	
Capital Stock held by Directors	7,000 00	7,000 00		
D. Robertson, Agent	129 26	....	....	129 26
Outstanding Accounts Receivable	2,000 00	24,639 68	22,639 68	
	1,243,765 90	1,644,988 49	450,002 76	48,780 17
		1,243,765 90	48,780 17	
Net Increase		401,222 59	401,222 59	
LIABILITIES.				
Capital Stock	500,000 00	500,000 00		
Mortgages on Real Estate	544,080 97	148,488 27	....	395,592 70
Erie Railway Co. Advances	192,150 92	838,395 43	646,244 51	
Bills Payable	...	142,337 74	142,337 74	
Outstanding Accounts Payable	1,863 15	15,767 05	13,903 90	
Cash (overdraft)	5,670 86	....	....	5,670 86
	1,243,765 90	1,644,988 49	802,486 15	401,263 56
		1,243,765 90	401,263 56	
Net Increase		401,222 59	401,222 59	

Exhibit No. 21 (b).

Balance Sheet North Western Mining and Exchange Company, May 31st, 1875.

Assets.

Construction:			
Dagus Railroad Repairs		$17,012 07	
Dagus Mine		6,675 93	
Early Mine		8,728 42	
Machinery		1,121 18	
Buildings		15,918 47	
Daguscahonda Railroad		50,000 00	
			$99,456 07
Supplies		....	534 69
Mine Stock and Tools		....	3,580 58
Real Estate		....	1,034,028 90
Real Estate Expenses		24,259 39	
Interest on Land Payments		69,042 11	
E. G. Butler, Attorney, (Services due			93,301 50
by Phil. & Erie Coal & Railway Co)		....	2,000 00
Amount of Seventy Shares of Capital Stock held by Directors		....	7,000 00
D. Robertson, Agent		....	129 26
Profit and Loss Accounts.			
Income:			
Interest		11 13	
Freight and Pass. Receipts		1,236 55	
Rents		1,108 95	
Coal		4,343 80	
Expenses:			
General Expense	$2,988 78		
Insurance and Taxes	1,302 75		
Mine Expenses	2,888 24		
Repairs and Renewals	219 12		
Railroad Operating Expenses	1,710 85		
Railroad Survey	704 34		
Freight and Charges on Coal	380 50		
Real Estate Improvement	240 75		
	$10,435 33	6,700 43	
Deficit		....	3,734 90
			$1,243,765 90

Liabilities.

Capital Stock	$500,000 00
Mortgages on Real Estate	544,080 97
Erie Railway Co. Advances	192,150 92
Hillside Coal and Iron Co.	1,863 15
Cash (over draft)	5,670 86
	$1,243,765 90

Pennsylvania and North Western Mining and Exchange Company, April 30th, 1878.

Assets.

Cash on hand				5,534 21
Construction:				
Dagus Railroad repairs			$17,721 69	
Dagus Mine			6,732 52	
Coal Hollow Improvement acct			11,682 49	
Early Mine			8,728 42	
Buildings			5,940 04	$50,805 16
Supplies			....	2,005 35
Mine Stock and Tools			....	11,097 12
Real Estate			....	1,134,028 90
Real Estate expenses			24,284 09	
Interest on Land Payments			373,634 24	397,918 33
Amount of seventy Shares Capital Stock held by Directors			....	7,000 00
Outstanding Accounts Receivable:	Good.	Bad.		
Erie Railway, H. J. Jewett, Rec'r	$6,118 18			
Penna. & Erie Coal & Railway Co	9,386 50			
Grand Trunk Railway Co	6,735 92			
C. A. Earley	16 25			
H. S. Thayer	44 99			
W. H. Scram	15 62			
S. S. Guthrie	526 38			
W. J. Donce & Co. (doubtful)	....	$111 38		
Lee Phillips	8 66			
Buffalo and Jamestown Railroad	141 95			
D. C. Hough	271 52			
John McLaughlin	....	175 00		
Hyde, Kline & Co	10 16			
Lee & Loomis	1,077 17			
	$24,353 30	$286 38	....	24,639 68
Profit and Loss Accounts:				
Income				
Freight and Passenger Receipts		....	17,683 52	
Rents		....	5,326 66	
Coal		....	145,325 50	
			168,335 68	
Expenses:				
General Expenses		$13,162 75		
Insurance and Taxes		6,794 71		
Mine Expenses		89,112 09		
Repairs and Renewals		2,924 98		
Railroad Operating Expense		17,892 51		
Freight and Charges on Coal		46,042 81		
Commissions and Allowances		2,244 63		
Railroad Repairs		423 61		
Car Service		210 08		
Interest		121 09		
Railroad Survey		704 34		
Farming Account		88 82		
Cars Destroyed by Fire		573 00	180,295 42	
Deficit			....	11,959 74
				$1,644,988 49

Liabilities.

Capital Stock	....	$500,000 00
Mortgages on Real Estate	....	148,488 27
Bills Payable	....	142,337 74
Erie Railway Co., Advances	....	838,395 43
Outstanding Accounts Payable:		
Penn. Railroad Co	$31 59	
Hillside Coal & I. Co	15,592 64	
Union Dry Dock Co	126 14	
Jackson, Isham & Co	16 28	
D. Robertson, Agent	40	15,767 05
		$1,644,988 49

Exhibit No. 22 (a).

Comparison between Balance Sheets Hillside Coal and Iron Company, May 31st, 1875, and April 30th, 1878.

	May 31st, 1875.	April 30th, 1878.	Increase.	Decrease.
Income	509,667 80	1,191,748 19	682,080 39	
Expenses	489,328 12	1,159,098 61	669,770 49	
Surplus	20,339 68	32,649 58	12,309 90	
Liabilities.				
Capital Stock	1,000,000 00	1,000,000 00		
Mortgages on Real Estate	663,362 09	265,829 72	....	397,532 37
Erie Railway Co. Advances	1,020,688 78	1,899,966 05	879,277 27	
Unpaid Wages	335 88	249 16	....	86 72
Outstanding Accounts Payable	346 90	337 52	....	9 38
Bills Payable	....	41,056 71	41,056 71	
Glenwood Coal Property Surplus	....	149,994 75	149,994 75	
	2,705,073 33	3,390,083 49	1,082,638 63	397,628 47
		2,705,073 33	397,628 47	
Net Increase		685,010 16	685,010 16	
Assets.				
Cash on hand	61,222 06	17,286 16	....	43,935 90
Bills Receivable	124,943 58	10,757 08	....	114,186 50
Construction	126,861 70	194,328 54	67,466 84	
Real Estate	2,133,747 98	2,191,412 55	57,664 57	
Mine Stock and Tools	12,956 94	31,064 64	18,107 70	
Supplies	2,711 59	1,380 06	....	1,331 53
Interest on Land Payments	103,544 60	660,107 52	556,562 92	
Mine Rent and Royalty	19,857 61	83,593 50	63,735 89	
Real Estate Expense	43,318 61	45,214 27	1,895 66	
Outstanding Accounts Receivable	75,908 66	136,734 26	60,825 60	
Chicago Dry Dock	....	18,204 91	18,204 91	
	2,705,073 33	3,390,083 49	844,464 09	159,453 93
		2,705,073 33	159,453 93	
Net Increase		685,010 16	685,010 16	

EXHIBIT No. 22 (b).

Balance Sheet Hillside Coal and Iron Company, May 31st, 1875.

ASSETS.

Cash on hand	....	$61,222 06
Bills Receivable:		
Good	$69,142 45	
Bad	55,801 13	
		124,943 58
Construction:		
Heidleburgh Mine Branch	9,928 89	
Heidleburgh Mine	1,385 92	
Forest City Mine	17,355 26	
Machinery and Fixtures	39,743 39	
Buildings	58,447 64	
Killeen & Coughlin (contractors)	60	
		126,861 70
Real Estate	....	2,133,747 98
Mine Stock and Tools	....	12,956 94
Supplies	....	2,711 59
Interest on Land Payments	103,544 60	
Mine Rent and Royalty	19,857 61	
Real Estate Expenses	43,318 61	
		166,720 82

OUTSTANDING ACCOUNTS RECEIVABLE.

	Good.	*Bad.*	
N. West Mining and Exchange Co.	$1,863 15		
F. M. Whitehouse, Agt	7,090 29	$20,454 81	
C. H. Angstadt	....	01	
F. Zeigler	....	351 39	
Willis & Dooley	104 16		
Zimmerman Coal Elevator Co.	2,846 03	42 49	
J. C. Hughes	92 81		
Weston, Dodson & Co.	19,696 15	110 27	
N. King	5,277 55	6,564 57	
M. W. Linderman	4,384 12	5,884 23	
J. C. Dickson	1,120 00	26 63	
	$42,474 26	$33,434 40	
			75,908 66
			$2,705,073 33

LIABILITIES.

Capital Stock		....	$1,000,000 00
Mortgages on Real Estate		....	663,362 09
Erie Railway Co. Advances		....	1,020,688 78
Unpaid Wages		....	335 88
Outstanding Accounts Payable:			
C. A. Blake & Co., Special a/c.		$346 89	
Houck & Stevens		01	
			346 90
Profit and Loss Accounts:			
Income			
Coal Account		505,417 29	
Interest		2,828 22	
Rents		1,422 29	
		$509,667 80	
Expenses:			
General Expenses	$19,659 20		
Mine Expenses	179,491 81		
Insurance & Taxes	14,154 72		
Freights & Charges on Coal	269,687 65		
Repairs and Renewals	4,621 86		
Testing Lands	1,570 11		
Expenses of Directors, Towanda Coal Co., Jefferson & B. B. & Pittsburg R. R.	142 77		
		489,328 12	
Surplus		....	20,339 68
			$2,705,073 33

EXHIBIT No. 22 (c).

Balance Sheet Hillsdale Coal and Iron Company, April 30th, 1878.

ASSETS.

Cash in hands of W. P. Shearman, Treasurer		$14,612 56	
" " Sam'l Hines, Superintendent		2,673 60	
			$17,286 16
Bills Receivable:			
Good		7,915 99	
Bad		2,841 09	
			10,757 08
Construction:			
Heidelburgh Mine Branch		9,928 89	
Heidelburgh Mine		1,385 92	
Powder Mill Shaft		9,945 15	
Forest City Mine		17,358 88	
" Pockets		2,513 95	
Machinery and Fixtures		39,423 90	
Buildings		60,360 53	
Glenwood Coal Property		75,000 00	
Killeen & Coughlin, Contractors		60	
		215,917 82	
Less 10 per cent. depreciation		21,589 28	
			194,328 54
Real Estate		....	2,191,412 55
Mine Stock and Tools		...	31,064 64
Supplies		....	1,380 06
Chicago Dry Dock		....	18,204 91
Interest on Land Payments		660,107 52	
Mine Rent Royalty		83,593 50	
Real Estate Expenses		45,214 27	
			788,915 29
Outstanding Accounts Receivable:	*Good.*	*Bad.*	
Erie Ry. Co., H. J. Jewett, Receiver	$94,520 29		
Glenwood Coal Co	3,319 21		
N. West. Mine and Ex. Co	15,592 64		
D. & H. Canal Co	7,014 20		
Riverside Coal Co	284 21		
A. Tompkins	....	$17 15	
C. A. Blake	6,000 00		
F. Zeigler	....	351 39	
C. D. Bush	368 17		
Smith Roswell	70 44		
John Stewart	45 00		
Judd & Whitehead, adv'd for Services	....	166 02	
S. Little	38 15		
G. W. Fries	58 80		
Amount forwarded	$127,311 11	$534 56	$3,253,349 23

LIABILITIES.

Capital Stock		....	$1,000,000 00
Mortgages on Real Estate		....	265,829 72
Bills Payable (Notes given on Settlement of Mortgages)		....	41,056 71
Accounts Payable		....	205 62
Erie Railway Co. Advances		....	1,899 966 05
Unpaid Wages		....	249 16
Outstanding Accounts Payable:			
G. R. Wilson & Co		$111 52	
E. P. Ward		10 51	
N. G. Upson		1 16	
W. H. Norris		7 04	
C. A Ford		04	
W. H. Chapin		1 37	
Chas. Hoyt		26	
			$131 90
PROFIT AND LOSS ACCOUNT:			
Income:			
Coal		1,103,201 36	
Interest		7,753 67	
Rents		4,227 18	
Coal Royalty Receipts		66,728 00	
Chicago Dry Dock Earnings		300 00	
Supplies, Excess of Inv'tory over acct.		9,522 96	
Sundry Differences in Accounts		15 02	
Expenses:			
General Expenses	$50,372 48		
Mine Expenses	600,230 25		
Insurance and Taxes	54,947 91		
Freights & Char's on Coal	335,932 14		
Com'ssions & Allowances	1,350 52		
Repairs and Renewals	19,713 15		
Chicago Dry Dk. Exp'nses	2,386 67		
Testing Lands	1,570 11		
Expenses of Directors (Towanda Coal Co., Jefferson & B. B. Pitts. R. R. Co)	142 77		
Depreciation of Property.	46,501 72		
Bad Debts written off	45,950 80		
	$1,159,098 61	$1,191,748 19	
Surplus			32,649 58
Amount Forwarded			$3,240,088 74

EXHIBIT No. 22 (c)—Continued.

Balance Sheet Hillside Coal and Iron Co., April 30th, 1878—Continued.

ASSETS.

Outstanding a/cs. Receivable	*Good.*	*Bad.*	
Amounts brought forward.	$127,311 11	$534 56	$3,253,349 23
J. E. Austin	404 67		
J. A. Shults	171 05		
A. L. Monroe	152 75		
E. R. Schoonmaker	50 64		
J. R. Fryer	14 09		
A. K. Johnson	3,893 37		
Emmet Helens	71 38		
Charles Hall	....	96 79	
W. O. Frost	148 46		
C. H. Wilson	23 89		
J. C. Cameron & Co	1,670 86		
Watson Manufacturing Co.	....	486 05	
John M. Robertson	80 00		
R. B. Cable	25 85		
M. V. Heller	68 70		
Ira A. Post	248 05		
B. F. Storm (advances for labor)	....	980 00	
G. S. Shepard	212 14		
C. H. Weston	8 10		
F. Puff	46 75		
Mullock Bros	35 00		
	$134,636 86	$2,097 40	136,734 26
			$3,390,083 49

LIABILITIES.

Amount brought forward	$3,240,088 74
Glenwood Coal Property Surplus acct.:	
Difference between estimated Value and Cost	149,994 75
	$3,390,083 49

EXHIBIT NO. 23.

Trial Balance of General Ledger—Erie Railway Company, May 31st, 1878.

DEBITS.

Erie Railway Preferred Stock	$5,858 10
Preferred Stock Certificates	39,549 00
Erie Railway Common Stock	61 00
Avon, Geneseo & Mt. Morris R. R. Stock (Held in Trust)	30,750 00
Buffalo, N. Y. & Erie R. R. Stock	815,308 00
Condensed Safety Air Brake Co. Stock	10,000 00
Erie & Atlantic Sleeping Car " "	153,800 00
Erie Oil Car Co. "	147,252 00
Montclair & Greenwood Lake Ry. "	60,000 00
Greenwood Coal Co. "	900,801 00
Hillside Coal & Iron Co. "	999,300 00
Harbor Wrecking Co. "	2,000 00
Jefferson R. R. Co. "	1,950 00
Lackawanna & Susq'a Coal "	40,000 00
Monticello & Port Jervis R. R. "	10,000 00
Nyack & Northern R. R. "	16,100 00
National Stock Yard Co. "	213,185 95
New York & New England R. R. "	100,000 00
Penn'a Transportation Co. "	450,600 00
Newark & Hudson R. R. "	135,183 36
Pavonia Horse R. R. "	25,550 00
Northwestern Mining & Exch. Co. "	493,000 00
Rochester & Genesee Valley R.R. "	350 00
Reno "	5,123 00
Susp'n Bridge & Erie Jn. R. R. "	162,050 00
Southern Central R. R "	17,980 00
Towanda Coal Co. "	243,000 00
Union Dry Dock Co. "	25,892 14
Union Steamboat Co. "	853,426 80
Wallkill Valley R. R. "	27,113 16
Boston, Hartford & Erie R. R. Bonds	132,987 00
Buffalo, Brad. & Pitts. " "	185,000 00
Glenwood Coal Co. "	985,285 00
Jefferson R. R. "	647,550 00
Amount carried forward	$7,936,005 51

CREDITS.

Common Stock	$78,000,000 00
Preferred Stock	8,536,910 00
First Mortgage Bonds	2,483,000 00
Second " "	2,174,000 00
Third " "	4,852,000 00
Fourth " "	2,937,000 00
Fifth " "	709,500 00
Consolidated Mortgage Bonds	12,076,000 00
Second Consolidated Mortgage Bonds	14,400,000 00
Convertible "	10,000,000 00
Sterling Mortgage "	4,580,000 00
Buffalo Branch "	182,600 00
Boston, Hartford & Erie R. R. Guaranteed Bonds (Weehawken Docks)	400,000 00
Real Estate Bonds	500 00
Mortgages, Real Estate	1,080,762 00
Vouchers Audited	14,237 44
Bills Audited	23,563 27
Bills Payable	7,066 45
H. J. Jewett, Receiver, Erie Ry	5,790,218 03
Accrued Interest Consolidated Mortgage Bonds	211,330 00
Interest, Coupon Account, Consolidated Mortgage Bonds	1,694,175 00
Coupon of Sept. 1, '76, on Consolidated Mortgage Bonds	29,645 00
Interest, Coupon Account, Second Consolidated Mortgage Bonds	3,528,105 00
Interest, Coupon Account, Sterling Mortgage Bonds	618,900 00
Accrued Interest, Sterling Bonds	80,150 00
Interest, Coupon Account, Convertible Bonds	2,103,281 25
Accrued Interest, Convertible "	116,666 66
Amount carried forward	$156,629,610 10

EXHIBIT No. 23—Continued.

Trial Balance of General Ledger—Erie Railway Company, May 31st, 1878.

DEBITS.		CREDITS.	
Amount brought forward	$7,936,005 51	*Amount brought forward*	$156,629,610 10
La Monte Mining & Railroad Co. Bonds	30,000 00	Interest, Coupon Acct., First Mortgage Bonds	9,730 01
Mariposa Company Bonds	1,000 00	Do. Second " "	6,615 00
Newburgh & New York R. R. Bonds	172,400 00	Do. Third " "	13,720 00
New Jersey & New York " "	34,000 00	Do. Fourth " "	7,630 00
Newark & Hudson " "	250,000 00	Do. Fifth " "	27,387 50
National Stock Yard Co. "	642,665 64	Interest, Coupon Acc't., Buffalo Branch Mortgage Bonds	273 00
New York & Penn. Blue Stone Co. Bonds	15,000 00	Accrued Interest, First Mortgage Bonds	14,498 96
Paterson & Newark R. R. "	238,275 00	Do. Second " "	38,045 00
Pavonia Horse Railroad "	79,540 00	Do. Third " "	84,910 00
Suspension Bridge & Erie Junction "	32,600 00	Do. Fourth " "	34,265 00
Towanda Coal Co. "	240,838 10	Do. Buffalo Branch Mtge. Bonds	5,325 83
Cost of Road and Equipment	115,443,853 46	Coupon of March 1, 1878, on Consolidated Mortgage Bonds	34,615 00
Avon, Geneseo & Mt. Morris R. R. Construction,	8,499 26	Accrued Interest, Boston, Hartford & Erie R. R. Bonds	42,338 71
Buffalo, Brad. & Pitts. " "	85,292 67	Ticket Orders	368 28
Barclay R. R. "	6,238 20	Bischoffsheim & Goldschmidt, Special Account,	2,024 00
Erie International Branch "	213,964 19	Unclaimed Wages	1,328 13
Erie & Gen. Valley " "	11,937 74	Weehawken Docks, Lumber Account	4,808 98
Hawley " "	296,226 51	Unpaid Dues	13,960 39
Jefferson " "	888,888 45	Car Key Accounts	1,370 00
Jefferson Railroad Extension "	53,097 07	Avon & Geneseo Valley R. R.	30,750 00
Montgomery & Erie Branch "	5,060 45	Assessments	11,510 89
Newburgh & New York R. R. "	259,668 25	Coupon Tax, Jefferson R. R. Bonds	11,008 14
New York & Fort Lee "	186,956 74	Scrip Certificates, Bost. H. & E. R. R. Bonds	3,820 00
Northern R. R. of New Jersey	517 80	Reclamations	5,561,677 14
Paterson & Newark R. R. Construction	718,389 02	Unpaid Dividends, Common Stock	11,501 20
Pavonia Horse Railroad "	86,906 99	Unpaid Dividends, Preferred Stock	19,405 50
Suspension Bridge & Erie Junc. "	302,740 80	Scrip Dividends, Preferred Stock	186,403 00
Goshen & Deckertown R. R. "	3,007 04		
Rochester & Gen. Valley " "	48,001 32		
Boston, Hartford & Erie R. R. Bonds, deposited with Weehawken Docks	400,000 00		
Erie Baggage Express, Outfit	22,798 48		
Grand Opera House Property	43,822 97		
Pavonia Horse Railroad Equipment	2,460 00		
Pen Horn Property	124,578 61		
Amount carried forward	$128,885,230 27	*Amount carried forward*	$162,808,899 76

EXHIBIT No. 23—Continued.

Trial Balance of General Ledger—Erie Railway Company, May 31st, 1878.

DEBITS.		CREDITS.	
Amount brought forward	$128,885,230 27	*Amount brought forward*	$162,808,899 76
Twenty-third Street Property	125,849 59		
Weehawken Property	1,631,464 52		
Real Estate, New York City and States of New York, New Jersey, Ohio, and Pennsylvania.	2,999,449 19		
Profit and Loss	11,559,082 20		
Interest on Funded Debt	2,538,509 65		
Coupon on Non-assenting Consl'd Mort'ge Bonds.	2,415 00		
Collection Vouchers	1,993 87		
Miscellaneous Accounts	101,300 69		
Consolid'd M'ge Bonds—Discount & Adjustment	807,156 12		
Second Consolidated Mortgage Bonds—Discount and Adjustment	4,874,000 65		
Convertible Bonds—Discount and Adjustment	670,624 24		
Bischoffsheim & Goldschmidt	24,776 63		
Bischoffsheim & Goldschmidt—Special Account			
London Banking Association	1,141,951 95		
J. S. Morgan & Co	600 00		
James McHenry	2,190,354 29		
F. W. Smith, Secretary	105 00		
Geo. R. Babcock	243 26		
Duncan, Sherman & Co	370 00		
Suspense Account	1,542,257 77		
Atlantic and Great Western R. R. Co. Lease of May 4, 1874	336,526 50		
Atlantic and Great Western R. R. Co	258,457 09		
Atlantic and Great Western R'y—J. H. Devereux, Receiver	735 13		
Wallkill Valley R. R	102,116 92		
Glenwood Coal Co	137,529 98		
Towanda Coal Co	50,155 88		
Advances to Hillside Coal and Iron Co	1,432,226 73		
Advances to N. West'n Mining and Exchange Co.	398,247 44		
N. Y. and N. J. Provision Dealers' Association	20,063 61		
Diamond Line, Advances	2,500 00		
Erie and North Shore Line, Advances	8,000 00		
Great Western Desp., Advances	12,000 00		
Sundry Railroads, Engineering Expenses	5,567 20		
Lockport and Buffalo Railroad, Cost	898 07		
Rochester and State Line " "	3,000 00		
Reparation of Roadway and Buildings	508,101 99		
Reparation of Motive Power and Cars	404,304 23		
Bills Receivable	919 92		
Del. and Hudson Canal Co., Suspense Account.	28,006 41		
Alexander Frear	1,507 77		
William H. Jessup	300 00		
	$162,808,899 76		$162,808,899 76

Accounting Department, Erie Railway Co.

EXHIBIT No. 24.

Trial Balance of General Ledger—H. J. Jewett—Receiver Erie Railway, May 31, 1878.

Dr.		
Cost of Road and Equipment	....	$2,189,936 63
Construction of Branch Lines, &c.:		
Avon, Geneseo & Mt. Morris R. R.	$3,386 09	
Buff., Brad. & Pitts.	18,302 08	
Honesdale Branch	63 35	
Erie International Ry	18,552 36	
Hawley Branch	138 13	
Jefferson Branch	11,933 33	
Montgomery & Erie	1,316 29	
Newark & Hudson	3,308 85	
Paterson & Newark	16,005 17	
Suspension Bridge & Erie Jn	13,459 37	
Goshen & Deckertown	374 51	
Weehawken Docks	14,163 91	
Rochester & Genesee V. R. R.	3,162 08	
Oak Cliff Docks	8,103 12	
Car Hoists at Leavittsburg and Mansfield, Ohio	14,344 11	
Erie & Genesee Valley R. R.	20 25	126,633 00
Materials and Supplies	....	799,732 90
Cash Account	....	346,021 51
Erie Railway Company	....	5,790,218 03
Pennsylvania Coal Company for Coal Car Equipment	....	10,319 16
Stocks of other Companies:		
National Stock Yard Co.	240,200 00	
Union Steamboat Co.	89,450 00	
United States Express Co.	500,000 00	
Erie International Ry. Co.	50,000 00	
Susp. Bridge & Erie Jn. R. R.	85,165 82	964,815 82
Bonds of other Companies:		
Paterson & Newark R. R.	239,950 00	
Pavonia Horse R. R.	820 00	
National Stock Yard Co.	15,000 00	
Northern Central R'y 5% 2d Mortgage	350,000 00	
Glenwood Coal Company	750 00	606,520 00
Amount due from Individuals and Companies as per Statement accompanying.	....	3,201,825 21
		$14,036,022 26

Cr.	
Profit and Loss	$9,195,316 00
Interest Coupon Account Long Dock Company Bonds	105,875 00
Accrued Interest Weehawken Dock Mortgage	5,371 10
Accrued Interest Boston, Hartford & Erie Bonds	328,077 95
Reclamations	266,605 49
Avon Station Insurance Account	3,280 72
Amount due to Individuals and Companies as per Statement accompanying	4,131,496 00
	$14,036,022 26

Accounting Department Erie Railway,
New York, December 27, 1878.

S. LITTLE,
Auditor.

EXHIBIT No. 25.

ERIE RAILWAY CO.—H. J. JEWETT, *Receiver.*

Amounts due to Individuals and Companies May 31, 1878.

Folio.	GENERAL LEDGER.	
271	Bills Payable	$254,372 97
274	Loans	1,117,000 00
382	Vouchers Audited	1,047,764 41
339	Conducting Transp'n, Pay-Rolls	234,552 31
341	Motive Power	179,783 24
343	Maintenance of Way, Pay Rolls	93,745 83
389	General Expense	17,789 00
347	Construction	383 90
322	Ticket Orders	167 15
366	Unclaimed Wages	6,233 45
374	Car Key Account	335 00
625	Paterson & Hudson R. R. Rent	20,166 67
626	Paterson & Ramapo "	12,500 00
627	Hoboken Land and Improvement Co. Rent	1,375 00
628	Newburgh & N. Y. R. R. Rent	7,816 67
629	Buff., N. Y. & Erie "	122,856 83
423	Montgomery & Erie "	3,500 00
425	Goshen & Deckertown "	2,916 67
632	Hawley Branch "	14,583 34
633	Honesdale "	8,750 00
634	Jefferson "	58,473 34
635	Rochester & Genesee Valley R. R. Rent	15,792 17
637	Erie & Genesee Valley R. R. "	24,570 00
638	Buff,, Bradford & Pittsburgh R. R "	17,126 67
639	Accrued Rental Paterson & Newark R. R.	14,793 34
640	" Susp. Bridge & Erie Jun	29,796 67
390	Wallkill Valley R. R., J. H. Jones, Supt	67 01
461	United States Express Co	20,000 00
465	Glenwood Coal Co	2,273 85
467	Towanda Coal Co	40,539 57
490	Pullman Palace Car Co	12,677 20
644	Rochester & State Line R. R.	5,000 00
	Amount carried forward	$3,387,702 26

Folio.	GENERAL LEDGER.	
	Amount brought forward	$3,387,702 26
	Foreign Roads—Freight Ledger	259,787 08
	" Passenger	251,924 44
	" Car Service	182,022 15
	Freight Agents Ledger	108 83
	Passenger Agents' and Conductors' Ledger	49 54
	Individuals and Companies	49,901 70
	Total	$4,131,496 00

Accounting Department Erie Railway Co.,
New York, December 21, 1878.

S. LITTLE, *Auditor.*

EXHIBIT No. 26.

ERIE RAILWAY CO.—H. J. JEWETT, *Receiver.*

Amounts due from Individuals and Companies May 31, 1878.

Folio.	GENERAL LEDGER.		
37	New York & Fort Lee R. R.		$177 29
38	Northern R. R. of New Jersey (construction)		1,370 60
53	Bergen County R. R. (construction)		171 36
76	*Bills Receivable:*		
	D. G. Powers	$3,000 00	
	N. J. & N. Y. R. R. Co.	472 61	
	Do. Receiver.	17,757 57	
	Dansville Trouls	8,570 98	
			29,801 16
373	Transportation Remittances		277,367 54
636	Avon, Genesee & Mt. Morris R. R. Rent		816 00
394	Northern R. R. of New Jersey		15,337 11
388	New Jersey & New York R. R. Receivers		7,229 86
445	Great Western Railway of Canada		5,033 61
450	Wallkill Valley R. R. (Trustees 2d Mtg. Bds.)		45,497 82
451	" " " 1st " "		4,489 07
387	Hillside Coal & Iron Co. Advances		473,088 73
463	North Western Mining and Exchange Co.		454,153 64
477	Western Union Telegraph Co.		8,179 05
479	United States Post Office Department		33,649 15
481	Blossburg Coal Co.		5,464 84
483	J. S. Morgan & Co., London		399 21
484	Thomas W. Powell, London		7 50
485	Ashurst, Morris & Co.		10,000 00
"	English Court of Chancery		7,500 00
486	Commercial Express Advances		2,000 00
487	Blossburg Coal Association		13,054 23
491	W. B. Shuttuc, Agent Erie & Chicago Line. Advances		500 00
492	Advances to Reconstruction Trustees, London		800 31
493	V. L. Lary, Receiver N. J. & N. Y. R. R. Co.		58 29
496	Delaware & Hudson Canal Co. for Interest retained by it on Boston, Hartford & Erie Bonds		315,000 00
	Amount carried forward		$1,711,146 37

Folio.	GENERAL LEDGER.	
	Amount brought forward	$1,711,146 37
641	New York & New Jersey Provision Dealers Association	1,350 00
642	Duncan, Sherman & Co.	232 78
"	C. C. Winans	100 00
643	Suspense Account United States Post Office Department	337,172 52
644	Thos. Maguire, Agent, San Francisco	254 00
	Foreign Bonds Freight Ledger	10,669 50
	" " Passenger Ledger	16,739 51
	" " Car Service Ledger	10,289 87
	Freight Agents	746,684 50
	Passenger Agents and Conductors	95,071 74
	Individuals and Companies	272,114 42
	Total	$3,201,825 21

Accounting Department Erie Railway,
New York, December 21, 1878.

S. LITTLE, *Auditor.*

Exhibit No. 27.

Amounts paid by H. J. Jewett, Receiver, for Account of the Erie Railway Company, from June 1, 1875, *to May* 31, 1878, *with interest to May* 31, 1878.

Interest Coupon Accounts, on 1st, 2d, 3d, 4th, 5th Buffalo Branch, and alternate coupons of 1st Consolidated Mortgage Bonds:		
Principal	$3,900,598 25	
Interest	308,560 07	$4,209,158 32
Hillside Coal and Iron Co.:		
Principal	472,924 06	
Interest	56,720 75	529,644 81
North Western Mining and Exchange Co.:		
Principal	454,147 99	
Interest	40,201 76	494,349 75
Mortgage Real Estate:		
Principal	198,806 05	
Interest	20,976 22	219,782 27
Miscellaneous;		
Principal	226,608 03	
Interest	43,347 72	269,955 75
Judgment for Guaranteed Interest, Boston, Hartford & Erie R. R. Bonds, in favor of Executors of Estate of J. S. Arnott, deceased:		
Principal	115,153 04	
Interest	12,070 88	127,223 92
General Office Rolls—Labor:		
Principal	62,530 57	
Interest	12,033 50	74,564 07
Line Rolls—Labor:		
Principal	1,763,424 57	
Interest	357,069 04	2,120,493 61
Supplies:		
Principal	916,478 17	
Interest	174,843 86	1,091,322 03
Amounts Paid to Redeem Securities Pledged May 26, 1875:		
Principal	1,411,417 31	
Interest	261,420 33	1,672,837 64
Grand Total		$10,809,332 17

Accounting Department Erie Railway Co.,
New York, February 14, 1879.
S. LITTLE, *Auditor.*

EXHIBIT NO. 27 (a).

SUPPLEMENTAL STATEMENT of Amounts Paid by H. J. JEWETT, Receiver, for account of the Erie Railway Company, from June 1, 1875, to May 31, 1878, with Interest to May 31, 1878.

Foreign Roads—Freight:		
Principal	$227,168 45	
Interest	45,543 32	
		$272,711 77
Foreign Roads—Passenger:		
Principal	165,554 23	
Interest	33,216 37	
		198,770 60
Rentals of Leased Lines:		
Principal	306,856 57	
Interest	59,554 98	
		366,411 55
Interest on Long Dock Company Bonds, accrued from January 1, 1875, to May 26, 1875, inclusive	102,177 42	
Interest	20,861 22	
		123,038 64
Interest on Weehawken Docks Mortgage	20,987 89	
Interest	4,232 46	
		25,220 35
Guaranteed Interest Boston, H. and Erie Railroad Bonds, on $400,000 paid Weehawken Docks, accrued from January 1, 1875, to May 26, 1875, inclusive	11,290 32	
Interest	2,239 24	
		13,529 56
Interest Ground Rents, &c	73,848 85	
Interest	8,457 42	
		82,306 27
Grand Total		$1,081,988 74

Accounting Department Erie Railway,
New York, February 19, 1879.

S. LITTLE, *Auditor.*

EXHIBIT No. 23—Continued.

Trial Balance of General Ledger—Erie Railway Company, May 31st, 1878.

DEBITS.		CREDITS.	
Amount brought forward	$128,885,230 27	*Amount brought forward*	$162,808,899 76
Twenty-third Street Property	125,849 59		
Weehawken Property	1,631,464 52		
Real Estate, New York City and States of New York, New Jersey, Ohio, and Pennsylvania.	2,999,449 19		
Profit and Loss	11,559,082 20		
Interest on Funded Debt	2,538,509 65		
Coupon on Non-assenting Consl'd Mort'ge Bonds.	2,415 00		
Collection Vouchers	1,993 87		
Miscellaneous Accounts	101,300 69		
Consolid'd M'ge Bonds—Discount & Adjustment	807,156 12		
Second Consolidated Mortgage Bonds—Discount and Adjustment	4,874,000 65		
Convertible Bonds—Discount and Adjustment	670,624 24		
Bischoffsheim & Goldschmidt	24,776 63		
Bischoffsheim & Goldschmidt—Special Account			
London Banking Association	1,141,951 95		
J. S. Morgan & Co	600 00		
James McHenry	2,190,354 29		
F. W. Smith, Secretary	105 00		
Geo. R. Babcock	243 26		
Duncan, Sherman & Co	370 00		
Suspense Account	1,542,257 77		
Atlantic and Great Western R. R. Co. Lease of May 4, 1874	336,526 50		
Atlantic and Great Western R. R. Co	258,457 09		
Atlantic and Great Western R'y—J. H. Devereux, Receiver	735 13		
Wallkill Valley R. R	102,116 92		
Glenwood Coal Co	137,529 98		
Towanda Coal Co	50,155 88		
Advances to Hillside Coal and Iron Co	1,432,226 73		
Advances to N. West'n Mining and Exchange Co.	398,247 44		
N. Y. and N. J. Provision Dealers' Association	20,063 61		
Diamond Line, Advances	2,500 00		
Erie and North Shore Line, Advances	8,000 00		
Great Western Desp., Advances	12,000 00		
Sundry Railroads, Engineering Expenses	5,567 20		
Lockport and Buffalo Railroad, Cost	898 07		
Rochester and State Line " "	3,000 00		
Reparation of Roadway and Buildings	508,101 99		
Reparation of Motive Power and Cars	404,304 23		
Bills Receivable	919 92		
Del. and Hudson Canal Co., Suspense Account.	28,006 41		
Alexander Frear	1,507 77		
William H. Jessup	300 00		
	$162,808,899 76		$162,808,899 76

Accounting Department, Erie Railway Co.,

EXHIBIT No. 24.

Trial Balance of General Ledger—H. J. Jewett—Receiver Erie Railway, May 31, 1878.

Dr.		
Cost of Road and Equipment	....	$2,189,936 63
Construction of Branch Lines, &c.:		
Avon, Geneseo & Mt. Morris R. R.	$3,386 09	
Buff., Brad. & Pitts.	18,302 08	
Honesdale Branch	63 35	
Erie International Ry	18,552 36	
Hawley Branch	138 13	
Jefferson Branch	11,933 33	
Montgomery & Erie	1,316 29	
Newark & Hudson	3,308 85	
Paterson & Newark	16,005 17	
Suspension Bridge & Erie Jn.	13,459 37	
Goshen & Deckertown	374 51	
Weehawken Docks	14,163 91	
Rochester & Genesee V. R. R.	3,162 08	
Oak Cliff Docks	8,103 12	
Car Hoists at Leavittsburg and Mansfield, Ohio	14,344 11	
Erie & Genesee Valley R. R.	20 25	126,633 00
Materials and Supplies	....	799,732 90
Cash Account	....	346,021 51
Erie Railway Company	....	5,790,218 03
Pennsylvania Coal Company for Coal Car Equipment	....	10,319 16
Stocks of other Companies:		
National Stock Yard Co.	240,200 00	
Union Steamboat Co.	89,450 00	
United States Express Co.	500,000 00	
Erie International Ry. Co.	50,000 00	
Susp. Bridge & Erie Jn. R. R.	85,165 82	964,815 82
Bonds of other Companies:		
Paterson & Newark R. R.	239,950 00	
Pavonia Horse R. R.	820 00	
National Stock Yard Co.	15,000 00	
Northern Central R'y 5% 2d Mortgage	350,000 00	
Glenwood Coal Company	750 00	606,520 00
Amount due from Individuals and Companies as per Statement accompanying	....	3,201,825 21
		$14,036,022 26

Cr.	
Profit and Loss	$9,195,316 00
Interest Coupon Account Long Dock Company Bonds	105,875 00
Accrued Interest Weehawken Dock Mortgage	5,371 10
Accrued Interest Boston, Hartford & Erie Bonds	328,077 95
Reclamations	266,605 49
Avon Station Insurance Account	3,280 72
Amount due to Individuals and Companies as per Statement accompanying	4,131,496 00
	$14,036,022 26

Accounting Department Erie Railway,
New York, December 27, 1878.

S. LITTLE,
Auditor.

EXHIBIT NO. 25.

ERIE RAILWAY CO.—H. J. JEWETT, *Receiver.*

Amounts due to Individuals and Companies May 31, 1878.

Folio.	GENERAL LEDGER.	
271	Bills Payable	$254,372 97
274	Loans	1,117,000 00
382	Vouchers Audited	1,047,764 41
339	Conducting Transp'n, Pay-Rolls	234,552 31
341	Motive Power	179,783 24
343	Maintenance of Way, Pay Rolls	93,745 83
389	General Expense	17,789 00
347	Construction	383 90
322	Ticket Orders	167 15
366	Unclaimed Wages	6,233 45
374	Car Key Account	335 00
625	Paterson & Hudson R. R. Rent	20,166 67
626	Paterson & Ramapo "	12,500 00
627	Hoboken Land and Improvement Co. Rent	1,375 00
628	Newburgh & N. Y. R. R. Rent	7,816 67
629	Buff., N. Y. & Erie "	122,856 83
423	Montgomery & Erie "	3,500 00
425	Goshen & Deckertown "	2,916 67
632	Hawley Branch "	14,583 34
633	Honesdale "	8,750 00
634	Jefferson "	58,473 34
635	Rochester & Genesee Valley R. R. Rent	15,792 17
637	Erie & Genesee Valley R. R. "	24,570 00
638	Buff,, Bradford & Pittsburgh R. R "	17,126 67
639	Accrued Rental Paterson & Newark R. R.	14,793 34
640	" Susp. Bridge & Erie Jun	29,796 67
390	Wallkill Valley R. R., J. H. Jones, Supt	67 01
461	United States Express Co	20,000 00
465	Glenwood Coal Co	2,273 85
467	Towanda Coal Co	40,539 57
490	Pullman Palace Car Co	12,677 20
644	Rochester & State Line R. R.	5,000 00
	Amount carried forward	$3,387,702 26

Folio.	GENERAL LEDGER.	
	Amount brought forward	$3,387,702 26
	Foreign Roads—Freight Ledger	259,787 08
	" Passenger	251,924 44
	" Car Service	182,022 15
	Freight Agents Ledger	108 83
	Passenger Agents' and Conductors' Ledger	49 54
	Individuals and Companies	49,901 70
	Total	$4,131,496 00

Accounting Department Erie Railway Co.,
New York, December 21, 1878.

S. LITTLE, *Auditor*

EXHIBIT No. 26.

ERIE RAILWAY CO.—H. J. JEWETT, *Receiver.*

Amounts due from Individuals and Companies May 31, 1878.

Folio.	GENERAL LEDGER.		
37	New York & Fort Lee R. R.		$177 29
38	Northern R. R. of New Jersey (construction)		1,370 60
53	Bergen County R. R. (construction)		171 36
76	*Bills Receivable:*		
	D. G. Powers	$3,000 00	
	N. J. & N. Y. R. R. Co.	472 61	
	Do. Receiver.	17,757 57	
	Dansville Trouls	8,570 98	
			29,801 16
373	Transportation Remittances		277,367 54
636	Avon, Genesee & Mt. Morris R. R. Rent		816 00
394	Northern R. R. of New Jersey		15,337 11
388	New Jersey & New York R. R. Receivers		7,229 86
445	Great Western Railway of Canada		5,033 61
450	Wallkill Valley R. R. (Trustees 2d Mtg. Bds.)		45,497 82
451	" " " 1st " "		4,489 07
387	Hillside Coal & Iron Co. Advances		473,088 73
463	North Western Mining and Exchange Co.		454,153 64
477	Western Union Telegraph Co.		8,179 05
479	United States Post Office Department		33,649 15
481	Blossburg Coal Co.		5,464 84
483	J. S. Morgan & Co., London		399 21
484	Thomas W. Powell, London		7 50
485	Ashurst, Morris & Co.		10,000 00
"	English Court of Chancery		7,500 00
486	Commercial Express Advances		2,000 00
487	Blossburg Coal Association		13,054 23
491	W. B. Shuttuc, Agent Erie & Chicago Line. Advances		500 00
492	Advances to Reconstruction Trustees, London		800 31
493	V. L. Lary, Receiver N. J. & N. Y. R. R. Co.		58 29
496	Delaware & Hudson Canal Co. for Interest retained by it on Boston, Hartford & Erie Bonds		315,000 00
	Amount carried forward		$1,711,146 37

Folio.	GENERAL LEDGER.	
	Amount brought forward	$1,711,146 37
641	New York & New Jersey Provision Dealers Association	1,350 00
642	Duncan, Sherman & Co.	232 78
"	C. C. Winans	100 00
643	Suspense Account United States Post Office Department	337,172 52
644	Thos. Maguire, Agent, San Francisco	254 00
	Foreign Bonds Freight Ledger	10,669 50
	" " Passenger Ledger	16,739 51
	" " Car Service Ledger	10,289 87
	Freight Agents	746,684 50
	Passenger Agents and Conductors	95,071 74
	Individuals and Companies	272,114 42
	Total	$3,201,825 21

Accounting Department Erie Railway,
New York, December 21, 1878.

S. LITTLE, *Auditor.*

EXHIBIT NO. 29.

Table E.—Rentals of Leased Lines Guaranteed by Erie Railway Company and other Guaranteed Payments.

	DESCRIPTION.	Stock.	Bonds.	Stock owned by Erie Railway Co.	Bonds owned by Erie Railway Co.	Guaranteed Rentals.	Amount accruing to outside parties.	Amount accruing to Erie R'y Co.
				(Par Value.)	(Par Value.)			
OPERATED AS PART OF MAIN LINE.	Paterson & Hudson, Paterson & Ramapo.	$880,000 00	$100,000 00	. . .	....	$78,400 00	$78,400 00	
	Long Dock Company.	....	3,000,000 00	8,000 shares owned by Erie but not issued.	11,000 00	210,000 00	209,230 00	$770 00
	Weehawken Branch ..	31,500 00	....	....	....	4,500 00	4,500 00	
	Trackage pd. year ending Sept. 30, 1874.....$25,700 Less Repairs. 7,500	....	....	....	....	18,200 00	18,200 00	
	Newburgh & N. York.	....	250,000 00	Stock not issued but owned by Erie R'y Co.	166,000 00	17,500 00	5,880 00	11,620 00
	Buff., New York & Erie	950,000 00	2,384,000 00	$575,900 00	49,000 00	240,101 25	196,358 25	43,743 00
	Fort Lee R. R..... Trackage pd. year ending Sept. 30, 1874	....	....	. .	....	3,500 10	....	*3,500 10
	Weehawken Docks...	....	1,320,515 07	....	....	92,436 06	92,436 06	
	Do. ...	....	200,000 00	....	....	12,000 00	12,000 00	
	Newark & Hudson.....	250,000 00	250,000 00	250,000 00	250,000 00	33,000 00	....	33,000 00
	Do. Use of Del., Lack & W. Track....	100,000 00	....	....	....	8,000 00	8,000 00	
	Do. Mortgages.....	....	47,500 00	....	....	3,325 00	3,325 00	
	Paterson & Newark.....	250,000 00	500,000 00	250,000 00	235,500 00	35,000 00	18,515 00	16,485 00
	Do. do. Mortgages.	....	53,000 00	....	....	3,710 00	3,710 00	
	Montgomery & Erie.....	150,315 00	177,000 00	....	....	25,000 00	25,000 00	
	Goshen & Deckertown....	105,000 00	226,500 00	....	....	21,500 00	21,500 00	
	Hawley Branch.....	500,000 00	....	....	....	35,000 00	35,000 00	
	Honesdale Branch.....	....	300,000 00	....	....	21,000 00	21,000 00	
	Jefferson Branch.....	2,044,800 00	2,000,000 00	2,044,800 00	714,000 00	140,000 00	90,020 00	49,980 00
	Rochester & Genesee Valley	555,200 00	....	149,400 00 Not yet surrendered to Erie.	....	34,012 00	25,048 00	8,964 00
	Avon, Geneseo & Mt. Morris	225,000 00	20,000 00	....	....	15,000 00	15,000 00	
	Erie & Genesee Valley	....	120,000 00	....	....	Gold 8,400 00	8,400 00	
	Buff., Bradford & Pittsb'h	2,016,800 00	580,000 00	2,016,800 00	185,000 00	40,600 00	27,650 00	12,950 00
	Niagara Falls Branch.....	500,000 00	1,000,000 00	175,300 00	35,000 00	70,000 00	67,550 00	2,450 00
	Northern R. R. of N. J....	....	....	900 00	....	35 p. c. earn'gs.	....	
		8,558,615 00	12,528,515 07	$5,463,100 00	$1,645,500 00	$1,170,184 41	$986,722 31	$183,462 10

ACCOUNTING DEPARTMENT,
ERIE RAILWAY CO.,
NEW YORK, May 6, 1875.

* Retained as an offset to Repairs of Track.

S. LITTLE,
Auditor.

EXHIBIT NO. 32.

Lease Long Dock Co. to New York & Erie Railroad Co., July 1, 1856.
(Transmitted with Report, original Exhibits, &c., to Court.)

EXHIBIT NO. 33.

(*Cited in testimony as "Ex. A, Dec.* 12, '78.")
Lease Buffalo, N. Y. & Erie R. R. to Erie R'y Co., Feb'y 27, 1863.
(Transmitted as above.)

EXHIBIT NO. 34.

(*Cited in testimony as "Ex. B, Dec.* 12, '78.")
Lease Buffalo, N. Y. & Erie R. R. to Erie R'y Co., April 15, 1874.
(Transmitted as above.)

EXHIBIT NO. 35.

Copy Statement of Hugh J. Jewett, Receiver, &c., to Stockholders, May 13, 1875.
(Transmitted as above.)

EXHIBIT NO. 36.

Report of Hugh J. Jewett, Receiver, &c., to Board of Directors, September 30, 1876.
(Transmitted as above.)

EXHIBIT NO. 37.

Annual Report of the Erie Railway Company, September 30, 1877.
(Transmitted as above.)

EXHIBIT NO. 38.

Report of James C. Spencer, Referee, &c., dated April 23, 1878, as to indebtedness of Receiver; also Exhibits accompanying it.
(Transmitted as above.)

EXHIBIT NO. 39.

Copy of paper used in cash accounting of Receiver, for the month of May, 1878, before James C. Spencer, Referee, entitled "Ex. B, June 1, 1878: Receipts and Disbursements, May 1, 1878, to May 31, 1878."
(Transmitted as above.)

EXHIBIT NO. 40.

Copy of paper used in cash accounting of Receiver, for May, 1878, before James C. Spencer, Referee, entitled "Ex. C, June 1, 1878: Receipts and Disbursements, May 27, 1875, to May 31, 1878."
(Transmitted as above.)

"EXHIBIT K."

Copies of Oral Stipulations, &c., made herein in regard to the reference as submitted, and in regard to the admission of papers, schedules, &c., in evidence, and facts admitted, &c., &c.

June 14th, 1878. All parties stipulated in open Court, and directed the Clerk to enter upon the minutes:

"That all the orders made and entered in the Supreme Court in this action and the action of The "Farmers' Loan and Trust Co. *v.* The Erie Railway Co. *et al.*, and the action of J. C. B. Davis *agt.* The "Erie Railway Co. *et al.*, and also all petitions, affidavits and reports of referees, and other papers upon "which said orders were based, and the pleadings and other papers in said actions, be considered as evi-"dence or proofs in this reference to that extent that either party may refer to or read any of the same, "and have copies thereof filed with and reported by the Referee to this Court."

November 26th, 1878. The attorneys for all parties being present, stipulated in open Court, and directed the Clerk to enter upon the minutes, as follows:

"1st. That the matters of Reference, under said order of December 31, 1875, (referred to herein in "minutes of July 5, 1878,) and under the order of May 20, 1878, so far as the same embraced or "related to the accounts, vouchers, acts and doings of the Receiver, from the 26th of May, 1875, to "and including the 31st of May, 1878, and the proof relating thereto, should be now submitted to "the Referee for consideration and report; and the parties to all of said actions having been notified, "or having appeared on this general accounting for the period aforesaid, that the Report of the "Referee shall be held to embrace a full and final accounting by said Receiver in all of the actions "in which said orders were entered for said period.

"2d. That the Referee should report the sum of five thousand dollars as suitable compensation for "all the services of Luke F. Cozans, Esq., who has been employed as counsel in the action of The "People, &c. *vs.* The Erie Railway Co., &c., by and on behalf of the Attorney-General in the account-"ings under said orders, and has appeared therein since the 1st April, 1878, and the sum of Two hundred "dollars for his necessary expenses and disbursements in said action to the date of this hearing, the "same to be paid to Luke F. Cozans, Esq., by said Receiver.

"3d. That whatever sums shall be paid by said Receiver for the services of disbursements of "counsel or the Referee under the said orders of Dec. 31, 1875, or May 20, 1878, shall be paid by "him as Receiver, but eventually charged to and deducted from any fund or estate that he may be "directed by any future order or decree of this Court to set apart, hold and account for as Receiver in the "first of the above-entitled actions.

"4th. That the Referee be now requested to report to the Court on the matters herein submitted at "as early a day as practicable, and to adjourn the remaining matters of the reference under order of May "20, 1878, to Dec. 11, 1878, 11 A. M., 187 West Street."

February 14, 1879. It was admitted in open Court by all the attorneys herein, and the Clerk was directed to enter on the minutes:

"That the Erie Railway Co. was represented by counsel in all the accountings, &c., &c., under the "Receivership before the Referee, &c., and had expressed its approval of all the matters of said "Receivership therein passed upon and presented."

February 14, 1879. It was admitted by all the attorneys herein, and the Clerk was directed to enter upon the minutes:

"That the cash balance of the Erie Railway Co., on the 2d of March, 1874, was $60,844.45."

April 5, 1879. Attorneys for all parties stipulated in open Court, and directed the Clerk to enter upon the minutes:

"That the scheme of reorganization is being carried out according to its provisions in due course, "and that all bonds to be issued under it, are now being, and will hereafter be issued."

I certify that the foregoing are true and correct copies of all the oral stipulations made in this reference, as submitted. HENRY L. VILAS, *Clerk of Referee.*

"EXHIBIT L."

Copies of Exhibits, Papers, &c., received in evidence under the foregoing Stipulations, or otherwise; being all the Exhibits herein, except such as are directly referred to in testimony of witnesses.

No. 1.

THIS INDENTURE, made the fourth day of February, eighteen hundred and seventy-four, between the ERIE RAILWAY COMPANY, a corporation created by and under the laws of the State of New York, and recognized by the laws of the States of Pennsylvania and New Jersey, party of the first part, and the FARMERS' LOAN AND TRUST COMPANY, a corporation created by the laws of the State of New York, party of the second part, witnesseth:

THAT WHEREAS, by virtue of the laws under which the party of the first part was created and organized, the party of the first part became and is invested with all and singular, the corporate rights, powers, privileges and franchises of the New York and Erie Railroad Company, and became the owner and occupier of all the property, real, personal and mixed, of the said Company, and succeeded to and became entitled to recover all debts due to the said Company, and entitled to all its things in action, and every other interest or estate whatsoever, which, in any manner, belonged or appertained to the said last-named Company, subject, however, to the liens then existing upon such property.

AND WHEREAS, also the entire line of railroad which belonged to the said New York and Erie Railroad Company was, and still is, subject to a first lien for the payment of certain bonds, issued by the said Company to the people of the State of New York, for the payment of sums of money, amounting in the aggregate to three millions of dollars, in pursuance of an Act of the Legislature of the State of New York, entitled "An Act in relation to the construction of the New York and Erie Railroad," passed May 14th, 1845, which bonds are generally known as the first mortgage bonds of said Company, and which by the said act were made a first lien upon the property of the said Company; and whereas, a second lien was created by the said last-named Company, by a mortgage of all its said railroad, franchises, property, rights and real estate whatsoever, to secure payment of the bonds therein mentioned, amounting in the aggregate to four millions of dollars, as by reference to the said mortgage on record will more fully and at large appear, and which bonds are known as the second mortgage bonds of the said Company; and whereas, a third lien was created by the said last-named Company, by a mortgage of all its said railroad, franchises, property and appurtenances, from and including Piermont, on the Hudson River, to and including the terminus of the said railroad on Lake Erie, to secure the payment of the bonds therein mentioned, which bonds are now outstanding to the amount of six million of dollars, as by reference to the said mortgage on record will more fully and at large appear, and which are known as the third mortgage bonds of said Company; and whereas, a fourth lien was created by the said last-named Company, by a mortgage of all its said railroad, franchises, property, rights and interests, including the Newburgh Branch, and certain leasehold estates of the said Company in the State of New Jersey, to secure the payment of the bonds therein mentioned, which bonds are now outstanding to the amount of four millions four hundred and forty-one thousand dollars, as by reference to the said mortgage on record will more fully and at large appear, and which bonds are known as the fourth mortgage bonds of the said Company; and whereas, a fifth lien was created by the said last-named Company, by a mortgage of all its railroad, franchises, property, interest and appurtenances, including the Newburgh Branch, and all its leasehold estates in the State of New Jersey, to secure the payment of the bonds therein mentioned, which bonds are now outstanding to the amount of nine hundred and twenty-six thousand five hundred dollars, as by reference to the said mortgage on record will more fully and at

large appear, and which are known as the fifth mortgage bonds of the said Company; and whereas, a lien was created by the Buffalo Branch of the Erie Railway Company, and the Erie Railway Company by a mortgage of the railroad running from Hornellsville in Steuben County, to Attica in Wyoming County, in the State of New York, together with all the property, franchises, interests and appurtenances appertaining to the said railroad, and to the said corporation, known as the Buffalo Branch of the Erie Railway Company, to secure the payment of the bonds therein mentioned, which bonds are now outstanding to the amount of one hundred and eighty-six thousand dollars, as by reference to the said mortgage on record will more fully and at large appear.

And whereas, all the said liens to the extent that the same are still outstanding unpaid, are recognized as liens prior to the mortgage hereby created upon the property mentioned in the said mortgages respectively.

And whereas, the party of the first part did on the first pay of September, one thousand eight hundred and sixty-five, issue its convertible, unsecured bonds, amounting in the aggregate to one million pounds sterling, the principal whereof becomes due on the first day of September, one thousand eight hundred and seventy-five, and which bear interest at the rate of six per cent. per annum, but which had no lien upon the property of the party of the first part.

And whereas, the said The Erie Railway Company created a further lien upon its property by a mortgage, known as a consolidated mortgage, dated the first day of September, one thousand eight hundred and seventy, made to the Farmers' Loan and Trust Company as trustee, to secure bonds in the aggregate amounting to thirty millions of dollars, of which last-mentioned bonds an aggregate amount of eighteen millions five hundred and fifty-four thousand dollars were reserved, and not to be issued or withdrawn except on the presentation and surrender of an equal amount of the aforesaid prior lien bonds; and the said Company did further, by an agreement dated the eighth day of December, one thousand eight hundred and seventy, made with Junius Spencer Morgan and others, further set apart and appropriate the further aggregate sum of five millions of dollars of the said consolidated bonds as collateral to and to provide for the aforesaid issue of so-called sterling bonds last above referred to, as by reference to the aforesaid consolidated mortgage, and to the aforesaid agreement made with Junius Spencer Morgan and others, will fully appear.

And whereas, under and by virtue of the provisions before recited, in respect thereto, a portion of the aforesaid prior lien bonds, and of the said sterling bonds have been cancelled, and consolidated bonds have been issued for an equal amount, and all the remainder of the said consolidated bonds, pledged for that purpose, and equal to the amount of the remainder of the said prior lien bonds, and of the remainder of the said sterling bonds are still unissued, and still remain pledged for the purpose of securing and of meeting the same.

And whereas, the said party of the first part did on the first day of January, in the year one thousand eight hundred and seventy-three, issue its convertible unsecured bonds for the aggregate amount of ten millions of dollars, the principal whereof becomes due and payable on the first day of January, in the year one thousand nine hundred and three, and which bear interest at the rate of seven per centum per annum, but which last-mentioned bonds had no lien upon the property of the party of the first part, and were not secured by any pledge or mortgage of its property, but which last-mentioned bonds, it is the intention of the party of the first part to equally and legally secure by virtue hereof to the same extent, and in the same manner as the bonds now about to be issued, and hereinafter particularly described, shall be secured hereby, and so that the aforesaid ten millions of dollars of convertible bonds, and the proposed issue of thirty millions of dollars of so-called second consolidated bonds, shall in point of security stand on the same footing, and be on an equality, and so that no bond of either of said issues shall have any priority over any other bond of either of said issues.

AND WHEREAS, for the purpose of enabling the said party of the first part to carry into effect the premises above recited, and to complete, finish and operate its railroad, and also for the purpose of obtaining the money and materials necessary for perfecting its line of railway, and enlarging the capacity, and extending the facilities thereof, the said party of the first part has, by a vote of its Board of Directors, resolved to borrow money to an amount not exceeding in the aggregate the sum of thirty millions of dollars, and to issue bonds for the payment thereof, to the number of thirty thousand, each for the sum of one thousand dollars, or two hundred pounds sterling, and bearing date the second day of March, Anno Domini one thousand eight hundred and seventy-four, which said bonds are numbered from one to thirty thousand inclusive, and are upon an equality so far as regards security for the payment thereof, by this Indenture, notwithstanding the same may be in fact executed, issued and delivered at different times, and are authenticated by the certificate of the said trustees thereon endorsed, and each of which bonds may be in substantially the form following, to wit:

United States of America, State of New York.—One Thousand Dollars—Two Hundred Pounds.
The Erie Railway Second Consolidated Mortgage Bond.

Know all men by these presents, That the Erie Railway Company acknowledges itself indebted unto WILLIAM PITT SHEARMAN, or the bearer hereof, in the sum of two hundred pounds sterling money, or in the sum of one thousand dollars in gold coin of the United States of America of the present standard of value and fineness, which the said Company promises and agrees to pay in like coin or in sterling money, at the rate of four shillings to the dollar, to the said William Pitt Shearman, or to the bearer hereof, (at his option,) on the second day of March, 1894, at the agency of the said Company, in the City of London, with interest thereon in like coin or in sterling money, payable half yearly at the said agency of the Company in London, (or, at the holder's option, at the office of the Company in the City of New York, on giving six months' notice in writing to the Treasurer of the Company to that effect,) on the presentation and surrender of the annexed coupons as they severally become due.

And the said Company further agrees with the holder hereof that this bond may be transferred upon the books of the Company in New York, or at any other place where the Company may keep transfer books for that purpose; but after a registration of ownership certified hereon by the transfer agent of the Company, no transfer except upon the books of the Company shall be valid, unless the last transfer upon said books be to bearer, which shall restore the transferability by delivery. And this bond shall continue so subject to successive registrations and transfers to bearer as aforesaid, at the option of each holder. Upon the failure to pay any one of the coupons hereto attached upon due presentation on or after maturity and offer to surrender the same, provided said default continue for the space of six months thereafter, the principal of this bond shall immediately become due and payable.

This bond is one of a series or an issue amounting in the aggregate to thirty millions of dollars and consisting of thirty thousand bonds, each for the sum of one thousand dollars, or its equivalent, the sum of two hundred pounds sterling, and numbered from one to thirty thousand, inclusive, all which are equally secured by mortgage bearing date the fourth day of February, 1874, duly executed and recorded and delivered by the obligor to the Farmers' Loan and Trust Company of the City of New York in trust, and conveying to the said Trustee all the Railways owned by said Company, together with all and singular the equipments, appurtenances and franchises therein mentioned, as by reference thereto will more fully and at large appear, but subject, nevertheless, to the existing priority of lien of the bonds given by the New York and Erie Railroad Company, viz.: of the bonds generally known as the first mortgage bonds issued in pursuance of an act of the Legislature of the State of New York, amounting in the aggregate to three millions of dollars, and of the outstanding second mortgage bonds, amounting in the aggregate to four millions of dollars, and of the outstanding third mortgage bonds, amounting in the aggregate to six millions of dollars, and of the outstanding fourth mortgage bonds, amounting in the aggregate to four million four hundred and forty-one thousand dollars, and of the outstanding fifth mort-

gage bonds, amounting in the aggregate to nine hundred and twenty-six thousand five hundred dollars, and also subject to the priority of the outstanding mortgage bonds given by the Buffalo Branch of the Erie Railway Company upon that part of the said railway which is between Hornellsville, in Steuben County, and Attica, in Wyoming County, New York, amounting in the aggregate to one hundred and eighty-six thousand dollars, and also subject to the priority of the mortgage known as the first consolidated mortgage, which was given to secure bonds amounting in the aggregate to the sum of thirty million of dollars, but out of which amount an aggregate amount sufficient for the security, satisfaction and cancellation of all of said recited prior lien bonds, and also to cover the existing sterling convertible bonds of this company for five millions of dollars, making a total of twenty-three millions five hundred and fifty-four thousand dollars were reserved; and to the extent that such prior lien bonds, and said sterling convertible bonds, remain uncancelled, the same are still reserved and remain placed in trusts for that purpose, and to be withdrawn from said trusts only upon presentation to, and concellation by the Trustee of an amount of such prior lien or sterling convertible bonds equal to the amount of the bonds then to be withdrawn from said trust, from time to time, until all are cancelled. And the mortgage given to secure the bonds of the present issue also secures equally a further sum of ten millions of dollars of bonds known as the convertible bonds of this Company, issued first January in the year 1873.

It is expressly provided that this Company may at any time after five years from the date hereof, on giving six months' notice, by publication in the Cities of New York and London, pay the principal of this bond according to its tenor, although the time above limited for such payment shall not then have expired, and after such notice and after the expiration of such period of six months and offer of payment, the interest on the same shall cease.

This bond shall not become obligatory until authenticated by a certificate endorsed hereon, signed by the said Trustee.

IN TESTIMONY WHEREOF, the said Erie Railway Company has caused its corporate seal to be hereto affixed, and the same attested by the signatures of its President and Secretary, and the coupons annexed by the name of said Secretary, on this second day of March, in the year of our Lord one thousand eight hundred and seventy-four.

President.

Secretary.

The Farmers' Loan and Trust Company hereby certifies that this bond is one of the thirty thousand bonds of one thousand dollars each (or two hundred pounds each when in sterling currency), secured by the mortgage referred to above, and that said mortgage is duly recorded as authorized by law.

FARMERS' LOAN AND TRUST COMPANY, *Trustee.*

All of said bonds bearing interest at seven per centum per annum, represented by coupons for the sum of seven pounds sterling each, payable semi-annually at the agency of the Company in London or in New York, after six months' notice to the Treasurer of the Company as above expressed.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said thirty thousand bonds, bearing date the second day of March, in the year one thousand eight hundred and seventy-four, and each and every of them, with the interest thereon accruing, after the actual issue of each of such bonds, and also for the purpose of equally and legally securing the payment of the aforesaid sum of ten millions of dollars, represented by the bonds of this Company for the same aggregate amount issued in the year one thousand eight hundred and seventy-three, and known as "convertible bonds," and so that the bonds, bearing date the 2nd day of March, in the year one thousand eight hundred and seventy-four, and the said convertible bonds, shall in point of security hereby, be on an equality. And in consideration of the premises above

recited, of the loan of the said money, and of the sum of one dollar to the said party of the first part in hand paid by the said party of the second part, at and before the receipt, ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the party of the first part hath granted, bargained, sold, assigned, transferred and conveyed, and by these presents doth grant, bargain, sell, assign, transfer and convey unto the said party of the second part, as trustee, and to its successor or successors in the trust, all and singular the railway of the party of the first part, from and including Piermont, on the Hudson River, to and including the final terminus of the said railway on Lake Erie, and the railway known as the Newburgh Branch, from Newburgh to the main line, and also all that part of the railway, designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York, and also all other railways belonging to the party of the first part, in the States of New York, Pennsylvania and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the said Company, and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood and supplies, of every kind, belonging or appertaining to the party of the first part, and all the tolls, income, issues and profits arising out of the said property, and all rights to receive or recover the same; also all the estate, right, title, and interest, terms and remainder of terms, franchises, privileges and rights of action, of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, by the Union Railroad Company, by the Buffalo, New York and Erie Railroad Company, by the Buffalo, Bradford and Pittsburgh Railroad Company, by the Rochester and Genesee Valley Railroad Company, and by the Long Dock Company.

To have and to hold the same, together with all and singular the emoluments, income, advantages, tenements, hereditaments and appurtenances thereunto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, unto the said party of the second part, and its successors for ever, on the trusts and for the uses and purposes in this Indenture declared, and not otherwise:

Provided always, and these presents are upon the express condition, that if the said party of the first part shall well and truly pay, or cause to be paid, to the holders of the said thirty thousand mortgage bonds, intended to be secured hereby, and to the holders of the said ten thousand bonds known as convertible bonds, also intended to be secured hereby, and to every of them, the principal sums of money therein mentioned, according to the true intent and meaning thereof, as the same become due, with interest thereon, at the times and in the manner therein provided, then and from thenceforth this Indenture, and the estate herein granted, shall cease, determine, and be utterly void.

And this Indenture further witnesseth, that the actual possession, use, management and control of all the premises herein granted shall remain with the party of the first part, so long as the said bonds shall remain without default; that in case default is made in payment of any interest on the said bonds, so that the same shall be in arrear for six months, after actual demand thereof, made upon the party of the first part, the principal of the bonds upon which the party of the first part is so in default shall then be due and payable, notwithstanding the term of credit and time of payment specified on the face of said bonds; and that the said party of the first part, its successors and assigns, will, whenever default shall be made in the payment of the principal or interest of any of the said bonds for six months continuously, assign to the party of the second part, upon demand, all the right, title and interest of the party of the first part in and to every lien of any of the property hereinbefore described; and will in the same case and upon such demand deliver to the party of the second part or its agents, the actual possession of the premises hereby granted and conveyed, and that in such case the party of the second part shall and may, by its officers and agents, take, receive, and collect the income and profits of said railroad, and all the other property hereinbefore described, first applying the same to the payment and discharge of all cur-

rent expenses, needful repairs, and of the expense of taking, holding and managing such property, and all taxes and other similar charges, payment of which may be necessary for the carrying on of the business of the said railway, and next to the payment of all sums becoming due and payable upon the bonds secured by mortgages or other liens hereinbefore described prior to the lien hereby created, and next to the payment of all sums due and payable upon the bonds hereby expressly secured; and that the said party of the second part having entered, as before provided, into the full possession of the property, estates, and interests hereby conveyed, may proceed to sell and dispose of the same, and of all the benefit and equity of redemption of the party of the first part therein, by public auction, subject, however, to any of the said prior liens which may then be outstanding, giving at least sixty days' public notice in three daily newspapers published in the City of New York, and at least one daily newspaper in each town on the line of said railroad in which a daily newspaper is printed, and setting forth in such notice the time, place, and terms of the said sale, and that the parties of the second part shall and may, as the attorneys of the parties of the first part, for that purpose, by these presents duly constituted and appointed, make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in law for the same in fee simple, and good and sufficient transfers or assignments of all the said personal property, and shall and may, out of the moneys arising from such sale or sales, retain the principal and interest which shall then be due on the bonds hereby secured for the benefit of the holders thereof, together with the cost and charges of the sale and advertisement, and all other sums which the party of the second part or its successors may have been obliged to pay by reason of their taking possession of and operating the same property, and also a reasonable allowance for their own services, rendering the overplus purchase money, if any there be, unto the party of the first part, its successors and assigns, which sale shall be a perpetual bar both in law and equity against the party of the first part, its successors and assigns, and all persons claiming or to claim in the premises, or any part thereof, by, through, or under them.

And this Indenture further witnesseth, that the said party of the first part, its successors and assigns, will at their own proper charge do all things necessary to be done to keep intact the lien hereby created, and will at any time or times hereafter, upon the request of the party of the second part, or its successors, make, do, and execute, and cause to be made, done, and executed, all and every such further reasonable acts, conveyances, assignments, and assurances in the law, for the better and more effectual vesting and confirming of the premises hereby granted or intended so to be, in and to the said party of the second part, or its successors, for ever, as by the said party of the second part, or its successors, or their counsel learned in the law, shall be reasonably devised or requested, and that the party of the first part will pay to the holders of the bonds hereby secured, respectively, the said principal sums of money therein mentioned, together with interest thereon, as the same shall come due and payable, and as the coupons therefor shall be presented for payment.

And this Indenture further witnesseth, that the said party of the second part hereby accept the trusts aforesaid, and agrees to execute them upon the following terms and conditions, which are mutually agreed upon by the parties interested herein, to wit: That the party of the second part shall be responsible only for gross negligence or willful default; that it shall not be required to act in execution of the trusts hereby created, except at its own option, unless requested to do so by some person having a direct interest under the trust, and furnishing reasonable indemnity to the party of the second part against the loss, trouble and expense which it may be at in so doing; that it shall have power to submit all controversies to arbitration; and that in case the party of the second part is required to take measures for the enforcement of this mortgage, the reasonable expense of such measures shall be paid out of the trust estate, in preference to all other charges.

In witness whereof, the party of the first part has caused these presents to be subscribed by its Vice-President, and the party of the second part has caused the same to be subscribed by its Presi-

dent, and the corporate seal of each party to be hereto affixed and attested by its Secretary, the day and year first above written.

THE ERIE RAILWAY COMPANY,
By LUCIUS ROBINSON,
1st Vice-Prest. and Acting President.

[L. S.]

Attest,
A. R. MACDONOUGH, *Secretary.*

THE FARMERS' LOAN & TRUST CO.,
By R. G. ROLSTON, *President.*

[L. S.]
Attest,
GEO. P. FITCH, *Secretary.*

Witnessed by
EDWIN F. COREY, Jr.,
WM. H. TAYLOR.

(Duly acknowledged and recorded.)

No. 2.

SUPREME COURT, COUNTY OF NEW YORK.

THE FARMERS' LOAN AND TRUST CO. *against* THE ERIE R. CO., AND J. C. B. DAVIS AND JAS BROWN, *Trustees.*	*Order Appointing Receiver and Referee.*

At a Special Term of the Supreme Court of the State of New York, held at the Court House, in the City of New York, on the 15th day of June, 1875.

Present—Hon. CHARLES DONOHUE, *Justice.*

A motion by the plaintiff in this suit for the appointment of a Receiver of the mortgaged property and franchises and rights of the Erie Railway Company, one of the defendants herein, and a New York corporation, founded upon the sworn complaint herein, and upon the affidavit of R. G. Rolston, coming on to be heard. And it appearing that due notice of such motion has been served, and due service of the summons and complaint made, upon the Erie Railway Company; and the last-named corporation now appearing upon said motion by William W. Macfarland, Esq., as its attorney, and Herbert B. Turner, Esq., appearing on behalf of the plaintiff for said motion; and it further appearing that the two consolidated mortgages mentioned in the complaint, and dated, respectively, on the first day of September, 1870, and the fourth day of February, 1874, were duly executed and delivered, and are valid instruments according to their purport, and that bonds have been issued thereunder which are now outstanding, and that default has been made in the payment of interest by the Erie Railway Company.

All as in the complaint alleged, and that said two mortgages are a lien on the property, interests, franchises and rights of the last-named corporation, according to the purport of said mortgages; that the interest upon said bonds is due and unpaid since the first day of June now last past, and that the said corporation has not the means of paying said interest, and that the proceeds and profits of said mortgaged property that should of right go to pay said interest may be, but for the protection of a receivership, diverted to other purposes; and that it is proper for the trustee party plaintiff to institute this suit.

And it appearing that the said The Erie Railway Company is in a condition of insolvency, and that a Receiver ought to be appointed to take care of and operate the mortgaged road and property, or the present receivership be extended for the protection of those secured by said mortgages:

Now, on motion of Mr. Turner, attorney for the plaintiff herein, it is ordered:

I.—That the authority of the Hon. Hugh J. Jewett, now by him possessed to operate the road and lines of the defendant, The Erie Railway Company, and so forth, as Receiver of the same, be also possessed by him in this suit, and as Receiver under the two consolidated mortgages mentioned in the complaint in this suit, so far as the same affects the mortgaged property, rights, or franchises therein mentioned.

II.—That, for the special protection of those secured by said mortgages in their legal and equitable rights, said Jewett is hereby appointed Receiver of the roads, property real and personal, leases, title deeds, books and contracts, rights, tolls, income, and franchises mentioned in or covered by either of said mortgages, or upon which is a lien, wherever situated (but if in other States, subject to the laws thereof, and to the proper orders of the courts therein); and that as such Receiver he is hereby authorized: (1) to demand, receive, and enforce possession of whatever he is hereby appointed Receiver; (2) to run and operate the roads and lines of said Erie Railway Company, or by it possessed at the date of his receivership, or covered by either of said mortgages, and collect the tolls, income and profits of the same; (3) to preserve in possession, and keep in good condition and repair, said road and property, and protect the title of the same, and that he pay the interest as it becomes due on the bonds secured by mortgages prior to said fifth mortgage; (4) to employ and pay such persons as he may find reasonably necessary and most useful in and about the discharge of the duties of a Receiver hereunder, and to dismiss the same; (5) to make and enforce appropriate contracts for limited periods, which shall be adapted to promote the efficient and economical operation of said roads; (6) to adjust and pay taxes, assessments, charges, rents and ticket and freight balances, and other expenses in and about the proper operation of said roads, and the protection of the mortgaged property; (7) to take and institute, as he may deem needful, whatever suits or proceedings he may, by counsel, be reasonably advised to be necessary and proper in the appropriate discharge of his duty as Receiver, and to defend and resist any suit or proceedings which he shall be so advised and shall believe would otherwise be prejudicial to the property, interests, or franchises committed to his charge; (8) to do such acts, and make such payment as may be necessary to preserve the corporate existence of The Erie Railway Company; and, generally (9), to do and cause to be done, in a lawful manner, as Receiver, whatever may be reasonable, needful and appropriate in and about the care, protection and preservation, in an economical manner, of the rights, interests, or franchises on which said mortgages, or either of them, are a lien, or the discharge of his duty as Receiver may render needful; but nothing in this general authority contained shall authorize said Receiver to do any act which The Erie Railway Company might not but for its insolvency have lawfully done, except as herein specifically authorized, nor to pay for supplies, or material or wages due or procured, or any other debt due more than four months before the making of this order, nor to ratify or give validity to any corrupt or illegal contract or undertaking, nor to change the priority of any claim or lien upon, or divert the income of, the mortgaged premises for the benefit of any junior claimant.

III.—That said Receiver file a bond (conditioned for the faithful discharge of his duty as Receiver) in the sum of $500,000, with sureties, and in a form to be approved by a Justice of this Court, and that upon the filing of such bond he be deemed fully qualified as a Receiver hereunder.

IV.—That as soon as practicable, after entering upon the discharge of his duty, the Receiver file an inventory, under oath, giving a correct and adequate description, as he may be able, of all the property, rights, interests and franchises mentioned in or covered by said mortgages, or either of them, of which he is hereby appointed Receiver; but the real estate may be described in a general manner only.

V.—The Receiver shall keep such adequate records of his acts, and especially such full, clear and complete accounts of all moneys by him received and paid out, and from what source and for what purpose, that the propriety and legality of his action, in these regards, may at all times appear, and he shall preserve proper vouchers for all payments. All money on hand, not needed for present use, shall be kept in one or more banks or trust companies, of approved credit, in the city of New York, to his credit as Receiver, and all payments shall be made, so far as reasonably practicable, by, and all money be drawn thence by or upon check, in his name as Receiver.

VI.—And it appearing to the Court that the duties of the Receiver must be so complicated, and his payments must be so numerous and intricate, and so difficult to be explained after the elapsing of a considerable time, when some of his agents may have left, and that a prompt judgment of the Court thereon is expedient and just to said Receiver, and to the parties in interest, it is further ordered:

(1.) That James C. Spencer, Esquire, Counsellor-at-Law, be and he is hereby appointed a Referee to pass, decide and report upon the accounts and vouchers and doings of the Receiver, which may be rendered to be passed before him, and to take testimony, and report upon any other question or matter which under this order may be brought before such Referee.

(2.) That in case of any question or matter within the authority of the Receiver under this order, to decide or take action upon, as to which he shall desire information under oath, he may offer to have the same referred to said Referee; and in case the other parties in interest shall so consent, testimony may be taken before such Referee, who may report the facts with his views to the Receiver, who may use any testimony so taken, and such report, in making his decision, but the views of such Referee and such report shall in no way bind such Receiver.

(3.) Said Receiver may at any time, and from time to time, on eight days' notice to the parties hereto, or such less notice as may be accepted, of an intention so to do, present his accounts and vouchers for any particular period not less than one month, to be in the notice mentioned, to such Referee, at a time and place to be in said notice stated, for examination, adjustment and allowance, and said Referee shall proceed in their examination, and, in regard to proof affecting their correctness, according to the practice in cases of other similar accounts. And he shall proceed with all dispatch consistent with giving those objecting a fair opportunity to be heard.

All objections to such accounts shall be made before such Referee in writing, with reasonable precision and within such reasonable time as the Referee shall fix, and shall, in a general way, state the grounds of the objection to any item.

After hearing the parties, any proper evidence offered, and the Receiver's answer to any objections, the Referee shall speedily report to this Court the facts proved, and his opinion as to the items disputed; and any party so objecting to such account may take exceptions in writing to any portion (referring to items so objected to) of said report, and he shall state the grounds of his exception. Unless in special cases where, in the opinion of the Referee, an original voucher ought to be brought before this Court, the original vouchers and papers may be returned to the Receiver for his protection, and only copies of those disputed may be attached to the report; but the report shall clearly show the period covered by such accounting.

(4.) And all vouchers and payments not so in writing objected and excepted to, as well as all the actions of said Receiver so brought before said Referee, and not disputed there, and the decision and report of said Referee, so far as not excepted to by any party, or by the Receiver, shall be deemed final and conclusive upon all parties, and upon the Receiver; and such accounts, vouchers and payments shall not be liable to be again called in question.

VII.—The Receiver is at liberty at any time to apply to this Court for further instructions and authority in and about the discharge of his duty.

(Endorsed—Filed June 15th, 1875.) A copy.

WM. WALSH, *Clerk.*

No. 3.

N. Y. SUPREME COURT.

THE FARMERS' LOAN AND TRUST CO., Trustee, Etc., *agst.* THE ERIE R. CO. *et al.*	*Pet. and Order, Permission to go to Europe.*
J. C. B. DAVIS, Trustee, Etc., *agst.* THE ERIE R. CO. *et al.*	

To the Supreme Court of the State of New York:

The petition of Hugh J. Jewett, Receiver in the above entitled actions, respectfully represents:

That nearly all, if not all, of the bonds issued by the defendant Company under the mortgages to the p'aintiffs in the complaints in said actions set forth, are held and owned in Europe, the larger part thereof in Great Britain.

That the holders thereof are exceedingly numerous, and owing to the nature of the mortgaged premises, the very large amount of the mortgage debt and its distribution among a large number of people in different countries, it is not possible for bond and coupon holders, acting separately, to do what is needful in order to enforce and protect their respective rights.

Nor is it possible for the plaintiffs, with due regard to the interests of bondholders, to proceed to a final decree of foreclosure and to a sale of the mortgaged premises, until they shall have made the necessary arrangements to protect their interests, and this involves an agreement on some plan of purchase and reorganization.

In the summer of the year last past, a convention of such bondholders was held in London. A committee of their number was appointed, of which Sir Edward Watkin, M. P., was appointed chairman.

This committee has since represented the general body of bondholders, and as such representative has been in constant communication with your petitioner as Receiver, in regard to the situation and management of the mortgaged premises, and their rights and interests generally.

This committee has urgently requested that your petitioner would go to London in order to aid and assist them in person in arriving at a proper conclusion as to the proper course for the protection and advancement of the interests of all parties, believing that the peculiar knowledge which the relation of your petitioner to the property has enabled him to acquire, is essential to this end.

Your petitioner has laid this request before the respective parties to this action. He is informed and believes that they respectively desire that your petitioner should comply with this request of the committee. Annexed to this petition is a copy of the resolution of the Board of Directors of the Erie Railway Company.

Your petitioner respectfully submits to the Court the question of the propriety of his complying with such request, and if the Court should be of opinion that it is proper and right for him so to do, he respectfully asks leave of the Court to that end.

If such leave should be granted, your petitioner will not be absent later than the 1st of November, and will return before that time in case he should be advised that his presence here at an earlier date is for any reason necessary.

And your petitioner will ever pray, etc.

H. J. JEWETT,
Receiver.

City and County of New York, ss.:

HUGH J. JEWETT, of said city, being duly sworn, says, that he is the petitioner named in the foregoing petition, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Sworn before me this 21st day of June, 1876. } (Signed,) H. J. JEWETT.

C. G. BARBER, *Notary Public*.

RESOLUTION REFERRED TO IN PRECEDING PETITION.

At a meeting of the Board of Directors of the Erie Railway Company, held at the general offices in the City of New York, on Tuesday, June 20th, 1876, the following resolution was adopted:

"*Resolved*, That this Board desires that the President should visit London, as requested by the Chairman of the Committee of the Bond and Shareholders; and that until he shall have reported the result of his conference there with that Committee, this Board adheres to the Report made by its Committee, and adopted by it at the meeting of the Board held on the 23d day of March last."

I hereby certify that the foregoing resolution is a true copy from the minutes of the Board of Directors of the Erie Railway Company.

L. S.

A. R. MACDONOUGH,
Secretary.

Dated New York, June 20th, 1876.

At a Special Term of the Supreme Court of the State of New York, held at the Court House in the City of New York, on the 22d day of June, 1875.

Present—HON. CHARLES DONOHUE, *Justice*.

(*Title of Actions.*)

On the annexed petition of Hon. Hugh J. Jewett, Receiver in the above entitled actions, and on the consent of the attorneys for all the parties respectively in said several actions to the entry of this order, the premises having been fully considered, and due deliberation having been had:

It is ordered, that the said Hugh J. Jewett, Receiver as aforesaid, do have leave to proceed to Europe, to remain absent for such reasonable time as may be found to be necessary to accomplish the object for which this leave of absence is required. And that he make all needful and proper arrangements for the proper care and management by his officers and agents of the property and premises whereof he is Receiver, during the period of his absence.

(A copy.) WM. WALSH, *Clerk*.

No. 4.

SUPREME COURT OF THE STATE OF NEW YORK.

THE PEOPLE, &c., *against* THE ERIE R. CO., *et al.*	*Pet. and Order to remit £2,000 to London.*
J. C. B. DAVIS, *Trustee, agst.* THE ERIE R. CO., *et al.*	
THE FARMERS' LOAN AND TRUST CO., *Trustee, agst.* THE ERIE R. CO, *et al.*	

To the Supreme Court :

Your petitioner, HUGH J. JEWETT, respectfully represents as follows:

First.—That he is the Receiver of the Erie Railway Company, appointed by orders made in each of the three above-mentioned suits, and is engaged in operating said road.

Second.—That the two last-mentioned suits are brought to foreclose mortgages upon the real property of said Company, of which mortgages there are seven in all, to secure as many issues of bonds, and that of more than $26,000,000 of bonds outstanding under the mortgages being foreclosed in the last of the three above-mentioned suits, he is informed and believes that more than nine-tenths are owned and held in Great Britain, and on information and belief he also states that a like proportion of nearly $15,000,000 of the unsecured bonds,* as well as a very large proportion of the preferred and common stock of said Company, are also owned and held in Great Britain.

Third.—Your petitioner is informed and believes, that unless amicable counsels shall prevail, a long and expensive litigation would be likely to arrive between some of the holders of the different classes of said securities to determine their respective rights.

Fourth.—That, as your petitioner has been informed and believes, there have been such measures taken in England that a Committee has been formed by the common assent of the holders of a great majority of such securities, owned in England (which has not been opposed in the United States), and with power to act for their owners to the common end of bringing about some amicable adjustment of the affairs of said Company, if possible without a foreclosure, but, if needful, through a foreclosure, though with the least practicable delay and controversy.

That members of said Committee, including Sir Edward Watkin, Chairman, and Mr. John Morris,

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* These bonds called "unsecured" are as follows :

First, £1,000,000 Sterling Loan Bonds, to secure which first consolidated Mortgage Bonds were lodged with J. S. Morgan and others, under agreement of date 8th December, 1870.—Of these bonds, £84,000 have been exchanged for bonds of First Consolidated Mortgage under the agreement mentioned, leaving outstanding £916,000 (say $4,457,714.00) still secured as above.

Second, $10,000,000 Convertible Bonds, provided for in express terms by the Second Consolidated Mortgage, and reckoned as part of the $40,000,000 thereby secured. C. L. A.

the legal adviser of the Committee, were in the United States during the past summer, and had many consultations with your petitioner, and as a result of their visit, and of the action of their Committee, a plan has been adopted for having an agency in London for promoting such amicable settlement, and the outlines of a general scheme for the same have been already agreed upon.

Fifth.—That by reason of said results being proposed, and at the request of such Committee, an application was made to this Court in said suits, in which the need and utility of such an agency was set forth, and the necessity for some money to pay expenses was explained; and upon such application an order was made by this Court on the seventh day of October last, of which a copy is hereunto attached and marked Schedule A; but no money has been paid thereunder, though your petitioner believes said Committee has taken action on the faith thereof.

Sixth.—Your petitioner is informed and believes that said Committee and their legal adviser are now diligently and successfully engaged in maturing a plan, and obtaining the necessary assents, whereby such amicable arrangement seems likely to be accomplished, and thereby expensive controversy in the Courts would be avoided.

Seventh.—And your petitioner further states, that among the assets in the hands of your petitioner, and which he feels called upon to make an effort to collect, are two claims, one against James McHenry and the other against the London Banking Association (Limited), both of London, each of which claims is for more than a million of dollars due said Company, and he fears the same cannot be collected without legal proceedings; and said Committee are of opinion that such claims should be presented, and that the same can be maintained; and your petitioner has been so advised by his counsel here, and has retained Mr. Morris, the same London solicitor employed by said Committee to collect such claims.

Eighth.—That for the purpose of paying expenses incurred by said Committee (including payment in respect of said agency), and to pay retaining fees in said proposed litigation, application has been made to your petitioner, in behalf of said Committee, to remit a sum which, in London, shall be equal to two thousand (£2,000) pounds sterling; and while it is the decided opinion of your petitioner that it is just and expedient to remit such amount for the purposes aforesaid, your petitioner has yet thought it most fit to present the matter to this Court, and to take its instruction, which he now prays in the premises.

(Signed) H. J. JEWETT.

City and County of New York, ss.:

HUGH J. JEWETT, being sworn, says: That he has read the foregoing petition, signed by him, and that he believes the same to be true. H. J. JEWETT.

Sworn to before me, this 24th day of November, 1875,

H. L. SMYTHE, *Notary Public*, N. Y. Co.

SCHEDULE "A."

Petition and Order authorizing Arrangement with English Bondholders Committee.

(Title of Actions.)

City and County of New York, ss.:

C. J. BARBER, being duly sworn, says that he is, and since the appointment of Mr. Jewett as Receiver of the Erie Railway Company has been, the Secretary of that officer; and has, for several years prior, been Secretary of the President of that Company; and is well informed as to the residence and ownership of the stock and bondholders of that Company; and on information and belief he avers, that a majority of the shares of the Preferred Stock, that much the greater portion of the shares of the Common Stock, and about nine-tenths of the bonds upon which interest is in arrear, are owned and held in Great Britain; and in like manner he further states that the owners and holders of said stock and bonds so held and owned abroad, have sent to the United States members of a committee by them selected, of whom Sir

Edward W. Watkin is chairman, and for whom Mr. John Morris (Solicitor, etc., in London), both of England, is legal adviser; and that after full conference with the Receiver, Mr. Jewett, as to the future management or organization of the affairs of said Company, they and said Receiver have reached among others the following general conclusions, which said Jewett, as the officer of the Court, deems it his duty to bring before the Court for any appropriate sanction or instructions, viz.:

First.—That the Receiver should give to the Committee his views as to a proper scheme for the re-arrangement or reorganization of the affairs of the Company.

Second.—That bondholders whose interest is in arrear ought to have a voice as to the expenditure of net earnings otherwise applicable to interest, that may need to be expended during the period that default may continue while the affairs of the Company are being placed in that condition, which will authorize the termination of the Receivership.

Third.—That such voice might be practically expressed through a representative committee of the last-named bondholders, or of the said bond and stockholders, whose advice the Receiver should consult as to the expenditure of the last-named earnings.

Fourth.—That the last-named Committee should, as they may find needful, open an office in the City of London for the transaction of business connected with the affairs of the said expenditures, and with the measures for the rearrangement of reorganization aforesaid, the proper expenses of which office the Receiver should pay from the funds of his Receivership; and that the Receiver transmit monthly to that office a statement of earnings and expenditures, as he may find practicable.

Fifth.—That it is just and expedient that at least those bondholders, whose interest is at any time in arrear, should be allowed to vote, and that it is desirable that the laws affecting the company should be so amended as to allow such voting, and that in the meantime all such proper measures should be encouraged by the Receiver, with a view to their becoming a part of the plan of rearrangement or re-organization, as will obstruct mere speculative voting and combinations, and at the same time encourage a steady and honest representation of the *bona fide* stock and bondholders who may be entitled to vote.

Sixth.—That it is proper, and would be advantageous, to allow the stock and bondholders residing abroad to have some representation from their own numbers in the Board of Directors, so soon as the laws may be so amended as to permit the election of a limited number of non-resident directors.

Seventh.—That the Receivership should be terminated as soon as by negotiations if possible, or by foreclosure if necessary, the Company can be relieved of unjust and fraudulent engagements, originating in the abuses of past management, and its affairs can be placed in a condition to be safely, prudently, and efficiently conducted by a corporation.

Eighth.—That to facilitate the carrying out of the measures which these conclusions contemplate, Mr. Morris should be associated with the present legal advisers of the Company, and with the counsel of the Receiver, and be regarded as one of the legal advisers of the undertaking.

And deponent further says, that he has read this affidavit to Mr. Jewett, the Receiver, and is desired by him to present the same to the Court for such sanction or instruction as to the matters therein as the Court may deem proper to give.

And deponent further says, that the interests involved are very large and complicated, and that unless they are very carefully managed, and all reasonable precautions are taken to allay the jealousy and give a fair representation to the interest and wishes of the foreign stock and bondholders, there may be a needless and expensive litigation, which said conclusions seem well adapted to prevent.

C. G. BARBER.

Subscribed and sworn to before me, this 30th day of September, A. D. 1875.

HENRY L. SMYTHE, *Notary Public, New York County.*

At a Special Term of the Supreme Court of the State of New York, held at the Court House in the City of New York, on the 7th day of October, 1875.

Present—Hon. Charles Donohue, *Justice.*

(Title of Actions.)

On reading and filing notice of motion for this order, with proof of service thereof upon the attorneys for the plaintiffs in the above-entitled actions, and for the defendants who have appeared therein respectively, and on reading and filing the affidavit of C. G. Barber, verified on the 30th day of September, 1875, and on motion of William W. Macfarland, of counsel for Hugh J. Jewett, Receiver, &c., no one appearing to oppose:

It is ordered, that until the further order of this Court, the Receiver of the Erie Railway Company be, and he is, hereby authorized, in a prudent and proper manner, not inconsistent with his general duty as a Receiver, to take such action as he may deem advisable, upon the basis of the conclusions, and to accomplish the purposes set forth in said affidavit, and to make the proper payments thereby made necessary.

(A copy.) WM. WALSH, *Clerk.*

At a Special Term of the Supreme Court of the State of New York, held at the Court House in the City of New York, on the 2d day of December, 1875.

Present—Hon. Charles Donohue, *Justice.*

(Title of Actions.)

On reading and filing the petition of Hugh J. Jewett, Receiver, sworn on the 24th day of November, 1875, and proof of due service of notice of this motion on the attorneys of the respective parties; and on motion of W. W. Macfarland, of counsel for said Receiver, Henry A. Tailer and Herbert B. Turner, Esquires, of counsel for J. C. Bancroft Davis, Trustee, and The Farmers' Loan and Trust Company, plaintiffs respectively, appearing but not opposing:

It is ordered that said Jewett, as Receiver of The Erie Railway Company, be authorized to remit a sum which shall be equal to two thousand (£2,000) pounds in London for the purposes mentioned in the petition, he taking such form of vouchers as he may deem proper to secure the due application of such money in due proportion to said purposes respectively.

(A copy.) WILLIAM WALSH, *Clerk.*

No. 5.

NEW YORK SUPREME COURT.

THE FARMERS' LOAN AND TRUST CO., Trustee, &c.,
against
THE ERIE R. CO., *et al.*

J. C. B. DAVIS, Trustee, &c.,
against
THE ERIE R. CO., *et al.*

Pet. and Order, etc. Disposition of Securities.

City and County of New York, ss. :

HERBERT B. TURNER, being duly sworn, deposes and says that he is an attorney and counsellor at law and one of the attorneys for the plaintiff, the Farmers' Loan and Trust Company, in the first above-entitled action.

At the date of the appointment of the Hon. Hugh J. Jewett, Receiver in the said action, and at the date of his appointment as Receiver in the action second above mentioned, to the complaint in which reference is had, the said defendant, the Erie Railway Company, owned and was possessed of a large amount of stocks and bonds, a description whereof is contained in the schedule annexed to this affidavit, marked "A," and in an explanatory schedule hereunto also annexed, marked No. 1.

By the latter schedule, it will, however, appear that certificates for certain stocks therein described, and which the said company owned at the date aforesaid, had not then been issued, but subsequently were issued to the company.

All the stocks and bonds mentioned in these schedules came into the possession and under the control of the said Receiver, in pursuance of his appointment, and are now in his possession and under his control.

The par value of these stocks and bonds is stated in the schedules referred to, but the actual value of the same, although unknown to the deponent, is very much less than the par value thereof.

Deponent is informed and believes that a large part of these securities are covered by the mortgages to the plaintiff, the Farmers' Loan and Trust Company, and constitute a part of the mortgaged property, but exactly what part and proportion of the said securities are so covered by the mortgages to the said plaintiff, it is not practicable at present to ascertain.

Deponent is also informed and believes that a large part of the said stocks and bonds, and, among others, the stock of the Hillside Coal and Iron Company, and the North Western Mining and Exchange Company, referred to in the said Schedule No. 1, were acquired by the said Company, and by the said Receiver, with moneys supplied by the respective parties, for whom the plaintiff the Farmers' Loan and Trust Company is trustee, and out of the income of the mortgaged premises which the said Receiver has been authorized by the orders of this Court to apply to that purpose, and that a trust results to the said plaintiff in respect of such investment, which the said plaintiff is entitled to have declared and enforced. The extent to which such investment and payments have been made, deponent is at present unable to state, and the same can only be properly ascertained upon an accounting hereafter to be had in the premises.

Deponent is also informed and believes that many of the stocks and bonds in the said schedule specified and described, were, at the date of the appointment of the said Receiver, under pledge, and some of them still remain so pledged to various persons and corporations to secure loans of money theretofore obtained by the defendant company upon the security thereof, and that a large part of the stocks

and bonds so pledged were afterwards redeemed by the Receiver, in pursuance of authority of this Court to that end; that they were redeemed out of the income of the mortgaged property in the hands of the Receiver, and that a trust results to the plaintiff, the Farmers' Loan and Trust Company, in consequence thereof, and the said plaintiff has a lien upon all the stocks and bonds so redeemed for its protection and reimbursement in respect of such payments by the Receiver.

Deponent is informed and believes that in the present state of the causes above referred to, it is impracticable, and is understood and agreed by all parties to be impracticable, to take, and state and adjust a final account in respect to the matters above referred to in an interlocutory proceeding for that purpose; that such final accounting and adjustment can only be had with due regard to the rights and interests of the parties upon the accounting preliminary to final decrees, and by the final decrees to be made upon the basis of such accounting.

Deponent is further informed and believes that, in consequence of the nature and fluctuating value of the stocks and bonds referred to, it is desirable and will be necessary to the protection of the interests of the several parties in interest, that the said Receiver should have power to sell or otherwise dispose of the said securities from time to time, in the exercise of a sound discretion on his part, and availing himself of the best opportunities for that purpose, treating the proceeds of such sale or other disposition in the meantime, in all respects as a part of the general fund in his hands as Receiver, and to be dealt with by him as a part of such general fund, leaving the respective rights of the parties to be ascertained and adjusted upon final accounting and decree.

Deponent further says that there is in the possession of the said Receiver various other stocks and bonds, a particular description whereof is contained in the schedule hereunto annexed marked "B," and the accompanying explanatory schedule marked No. 2.

These stocks and bonds were held by the defendant Company as collateral security in respect of the various obligations referred to in the said schedules, and were transferred to the Receiver by the defendant on his appointment.

Deponent is informed and believes that the plaintiff, the Farmers' Loan and Trust Company, has a large interest in these collateral securities, but the extent of that interest is at present not precisely known.

It is desirable and necessary to the protection of the interests of all parties that the Receiver should have general and ample authority to deal with these collateral securities from time to time, as the terms of the pledge may entitle him to deal with them, and according to his best discretion, for the interest of the trust which he represents, and that the proceeds thereof and of the several obligations for which they are, as aforesaid, held as collateral, should in like manner be treated and dealt with by the Receiver as a part of the general fund in his hands under the several mortgages.

Deponent is further informed and believes that Schedule "C," annexed to this affidavit, contains a list of certain stocks which were held by the Erie Railway Company subject to certain trusts, possession whereof was transferred to the Receiver, subject to such trusts.

Deponent is not informed, except as by the said schedule appears, of the particular nature of these trusts; but he is informed and believes that the plaintiff, the Farmers' Loan and Trust Company, has an interest also in these stocks, the exact nature and extent of which is likewise unknown; that for the reasons hereinbefore stated, it is desirable and proper that, having due regard to the trusts attaching to the said last-mentioned stocks, they should in like manner be treated and dealt with by the said Receiver as a part of the general fund of the Receivership under said mortgages.

Annexed to deponent's affidavit is a recapitulation of the schedules before referred to, marked No. 3.

H. B. TURNER.

Sworn before me, this 1st day of April, 1876.

G. W. BROWNE, *Notary Public*, N. Y. Co.

Schedule "A."—Inventory of Securities owned by the Erie Railway Company, transferred to HUGH J. JEWETT, *Receiver, May* 27, 1875.

Stocks.	*Par Value.*	
Towanda Coal Co.	$450,000	
Glenwood "	987,900	
Nat'l Stock Yard	232,200	
Susp'n Bridge & Erie Junc. R. R.	175,300	
Erie R'ly preferred Stock, divi'd cert.	39,549	
Jefferson Car Co.	278,400	
Pennsylvania Trans. Co.	450,600	
Brooks' Locomotive Works	99,000	
U. S. Towboat Co.	7,500	
North'n R. R. of New Jersey	900	
Lack'a & Susque. Coal & Iron Co.	40,000	
Jefferson R. R. Co.	2,044,800	
Compressed Air Safety Brake Co.	30,500	
Erie & Atlantic Sleeping Coach	153,800	
Hoboken & Jersey City Horse Car	6,000	
Harbor Wrecking Co.	2,000	
Monticello & Port Jervis R. R.	10,000	
Pav. Horse R. R. Co.	44,000	
Union Dry Dock Co.	75,000	
Reno Comp'y (Preferred)	5,123	
Erie R'ly "	7,475	
Walkill Valley R. R.	19,900	
Erie Oil Car Co.	500,000	
Buffalo, N. Y. & Erie R. R.	575,900	
Keystone Coal & Trans. Co.	495,000	
Inter'l Bridge Co. (cert.)	4,140	
South'n Central R. R.	89,900	
Buff., Bradford & Pitts. R. R.	2,016,800	
Paterson, Newark & N. Y. R. R.	250,000	
N. Y. & New England R. R. Co.	100,000	
Erie R'ly Co. (Common)	200	
Union Steamboat Co.	869,000	
Union Car Co.	330,500	
Nyack & North'n R. R.	16,100	
		$10,407,487
Bonds.		
Towanda Coal Co.	$244,000	
Glenwood Coal Co. (1st Mtge.)	499,000	
" " (Mtge.)	499,000	
Nat'l Stock Yards	655,000	
Susp'n Bridge & Erie Junc. R. R.	35,000	
La Mont Mining & R. R.	30,000	
New York & Boston Express Co.	170,000	
Glenwood Coal Co. (Coupons)	12,285	
Mariposa Co.	1,000	

Nyack & North'n R. R.	$30,000	
Buff., Brad., Pitts. R. R.	185,000	
Long Dock Co.	11,000	
Paterson & Newark R. R.	235,500	
Newark & Hudson R. R. Co.	250,000	
N. Y. & Penn'a Blue Stone Co.	15,000	
Jefferson R. R. Co.	714,000	
Newburgh & N. Y. R. R.	166,000	
Buff., N. Y. & Erie (1st Cons.)	49,000	
Pav. Horse R. R.	91,500	
N. J. & N. Y. R'ly Co.	34,000	
Boston, Hartford & Erie (Guar.)	629,000	
Erie R'ly, 2d Consolidated	600,000	
Montclair R. R. (2d Mtge.) represented by receipt of A. S. Hewitt, Trustee	100,000	
		5,228,285
		$15,635,772

Certified. W. P. SHEARMAN, *Treasurer.*

No. 1.—*List of Securities held by the Receivership of the Erie Railway Co., March* 14, 1876.

Stocks and Bonds owned by The Erie Railway Co., May 27, 1875, per Exhibit A.		$15,635,772
To which add the undermentioned Stocks owned by the Erie Railway Co. May 27, 1875, but for which Certificates were issued subsequent to that date, and consequently not included in Exhibit A, above mentioned :		
Newark & Hudson River R. R. Co.	$249,800	
Long Dock Comp'y	800,000	
Hillside Coal & Iron Co.	999,300	
Northwest Mining & Exchange Co.	493,000	
Buffalo, Bradford & Pitts. R. R. Co.	900	
		$2,534,000
To which likewise add the following mentioned Securities acquired during the Receivership, viz.:		
Stock of the Nat'l Stock Yard Co.	549,500	
Bonds " " "	10,000	
" " Pavonia Horse R. R. Co.	1,000	
" " Buffalo, N. Y. & Erie R. R. Co. (2d Mortgage)	237,000	
Bonds North'n Central R. R. Comp'y, 2d Gen'l Mortgage	350,000	
Stock of the Suspension Bridge & Erie Junc. R. R. Co.	50,000	
		1,197,500
		$19,376,272
From which deduct the following described Securities, sold and disposed of during the Receivership, viz. :		
Bonds of the Nat'l Stock Yard Co.	5,000	
" " Long Dock Co.	1,000	
Stock of United States Towboat Co.	7,500	
" North'n R. R. Company of N. J.	900	
Stock of Jefferson Car Company	278,400	
		292,800
Total par value of Securities owned by the Estate of the Erie Railway Co., March 14, 1876		$19,083,472

Certified. W. P. SHEARMAN, *Cashier of Receiver.*

(Title of Actions.)

City and County of New York, ss. :

HENRY A. TAILER, being sworn, says he is the attorney of J. C. Bancroft Davis, Trustee, the plaintiff in the first suit, and one of the defendants in the second suit aforesaid.

I.—That the first suit named is instituted for the foreclosure of the mortgage known as the Fifth Mortgage of the New York and Erie Railroad Company, which is a lien upon the property of the Erie Railway Company, whether the same be property owned at the date of the said mortgage or property thereafter acquired.

II.—That, as deponent is informed and believes, the bonds secured by the last-named mortgage are outstanding in the hands of numerous holders, and the interest payable upon the same is now in arrears and has been for more than a year last past.

III.—That when the Hon. Hugh J. Jewett was appointed Receiver, on or about the 27th day of May, 1875, under said mortgage, there were not only large amounts of mortgage interest in arrears, but there were large sums in arrears and owing by The Erie Railway Company to and for laborers, agents, clerks and officers employed upon its road; other large sums were also due and unpaid by the last-named Company, for supplies purchased for its use, and a very large amount of such supplies, so unpaid for, had then been used about the operation of said road.

IV.—That at the time of the appointment of said Receiver, deponent is informed and believes that it would have been perilous for said Receiver to have refused to pay the sums due to the many thousands of men so unpaid and necessary to operate the road, and it would have been highly prejudicial to the credit of said company and to the capacity of the Receiver to operate the road, to have refused to pay for the supplies already so used.

V.—That for said reasons there was a compulsion to pay said sums so unpaid for labor, salaries and supplies, and on information and belief deponent alleges that said Receiver has paid from the earnings of the mortgaged property since he was made Receiver, and as authorized by the Court, the following sums:

For laborers, as per pay rolls, then in arrears	$1,763,424 $\frac{54}{100}$
For salaries, clerks, officers, &c., &c	62,530 $\frac{37}{100}$
	$1,825,954 $\frac{91}{100}$
For supplies before purchased	916,478.17

And deponent is advised and believes that the whole amounts so paid on the back pay rolls should be reimbursed to the Receiver, for the benefit of bond holders, with interest, from any property of the Erie Railway Company, if there be any such property, not covered by said mortgage, and that there should be a like reimbursement in an amount equal to the value of all the supplies so paid for by the Receiver which had been used upon said road before said Receiver was appointed, by reason of said Receiver having paid for the same.

HENRY A. TAILER.

Sworn before me this 1st day of April, 1876.

CECIL CAMPBELL HIGGINS, *Notary Public*, N. Y. County.

At a Special Term of the Supreme Court of the State of New York, held at the Court House, in the City of New York, on the 6th day of April, 1876.

Present—Hon. CHARLES DONOHUE, *Justice.*

(Title of Actions.)

On the notice of motion for this order, and the affidavits of Mr. Herbert B. Turner and Henry A. Tailer, together with the several exhibits thereunto annexed, and proof of due service of copies thereof on the attorneys for the respective parties to the above entitled actions, on motion of Mr. Dorman B. Eaton, of counsel for J. C. Bancroft Davis, trustee, and on motion of Mr. Herbert B. Turner, of counsel for the Farmers' Loan and Trust Company, trustee, and on hearing Mr. Macfarland, for the defendant The Erie Railway Company—

It is ordered that all and singular the property, stocks and bonds, together with the proceeds of the various obligations for which it appears certain of the said stocks and bonds are held as collateral security, and also such of the last mentioned stocks and bonds, and the proceeds thereof, as the Receiver may become entitled to by reason of the appropriation thereof, in due course of law, or by the terms of the pledge, for the satisfaction of such obligations, in whole or in part, and also the said stocks and bonds, or the proceeds thereof, specified in the said schedule, and stated to be subject to certain trusts, to the extent that the defendant may have acquired, or the Receiver may acquire as such a beneficial interest therein, be held and dealt with by the said Receiver, in all respects, as a part of the general fund and estate embraced in the mortgages to the plaintiffs, respectively, and in this Receivership in these actions, and among other things, for the reimbursement to the plaintiffs of all sums paid under the orders of this Court out of the proceeds of the mortgaged premises for the discharge of debts due from the defendant, the Erie Railway Company, at the date of the Receiver's appointment, for labor and supplies, without prejudice to any equitable rights and interests of the respective parties which may be established on final accounting.

It is further ordered, that the Receiver have power from time to time, as in the exercise of his best discretion it may appear to be proper and necessary so to do, to sell or otherwise dispose of all or any part of the said stocks and bonds at public or private sale, at such time, and in such manner, from time to time, as in the exercise of such discretion will be most for the advantage of his trust, and to use and apply the said securities, or the proceeds thereof, for any and all of the purposes for which he is or may be authorized to use and appropriate the income of the mortgaged premises, having due regard to the legal and equitable rights of all persons having specific interests in the said stock and bonds by way of pledgees, pledgors, trustees or *cestuis que trusts.*

(A copy.) WM. WALSH, *Clerk.*

No. 6.

N. Y. SUPREME COURT.

THE FARMERS' LOAN AND TRUST CO., Trustee, *against* THE ERIE RY. CO., et al.	*Pet. and Order, etc., etc., Scheme of Reorganization.*
J. C. B. DAVIS, Trustee, *against* THE ERIE RY. CO., and others.	

GENTLEMEN: Please take notice, that the petition of the defendant, the Erie Railway Company, a copy of which is herewith served upon you, will be presented to the Court, at a Special Term thereof, to be

held at the Court House in the City of New York, on the 12th day of August, instant, at 11 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, and a motion then and there made that the prayer of the said petition be granted, and that said petitioner have such further and other relief in the premises as may be proper.

Dated New York, 10th August, 1876.

SHIPMAN, BARLOW, LAROCQUE & MACFARLAND,
Attorneys for Petitioner.

To Messrs. TURNER, LEE & MCCLURE,
Attorneys for the Farmers' Loan and Trust Company, Trustee; and
H. E. TAILER, Esq., *Attorney for J. C. Bancroft Davis, Trustee.*

(Title of Actions.)

To the Honorable the Supreme Court of the State of New York:

The petition of the defendant, The Erie Railway Company, respectfully represents, that the said defendant Company has received from a committee representing, as your petitioner is informed and believes, all or the great majority of the bonds secured by the mortgages to the above-named plaintiffs, as Trustees, a copy of a communication which is hereto annexed, marked "A."

Your petitioner has also received a copy of the proposed plan of foreclosure and reorganization, hereto annexed, marked "B."

Your petitioner has also received a copy of an agreement entered into, subject to the approval of this Court, between the Receiver of the property of your petitioner, the defendant Company, and the said committee, marked "C."

The Board of Directors of your petitioner, the said defendant the Erie Railway Company, have passed a resolution approving the said plan and scheme, whereof a copy is hereto annexed, marked "D."

Your petitioner believes that the said plan of foreclosure and reorganization is in accordance with the wishes, and is for the best interests of the beneficiaries under the said mortgages to the plaintiffs, as Trustees, and your petitioner, the defendant Company.

Your petitioner therefore prays, that the same and the agreement of the said Receiver may be approved by an order of this Court in the premises, subject to the rights of all persons having prior liens on the mortgaged premises.

ERIE RAILWAY COMPANY,
By E. D. HAMMOND, *Assistant Secretary.*

City and County of New York, ss.:

EDSON D. HAMMOND, of said city, being duly sworn, says, that he is the Assistant Secretary of the defendant, the Erie Railway Company; that he has read and subscribed the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true.

EDSON D. HAMMOND.

Sworn before me, this 12th day of August, 1876.

H. L. SMYTHE, *Notary Public*, New York County.

"A."

LONDON, ENGLAND, *July 22d*, 1876.

To the Farmers' Loan and Trust Company, New York:

Several meetings of the first and second consolidated mortgage bondholders and shareholders of the Erie Company have been held in this city, to consider the condition of the Company, and the means of

relieving it of its embarrassments, and enabling it to put itself in condition for economical and efficient working.

We beg to enclose you a draft of the programme finally agreed upon, in which the undersigned are named as Trustees to carry it into effect.

As the Receiver of the Erie Company will require the authority of the Court to enable him to do that which may be necessary to carry out the objects and purposes of the scheme, we have to ask you to co-operate with him, and his counsel, in obtaining from the Court such order or orders as may now, and from time to time, be required to justify him in doing that which may be essential. And as the final success of the scheme depends upon an active co-operation between ourselves as Trustees, the Receiver and the Company, we trust that you will, in such future supervision of the case as it may be your duty to exercise, confer freely with the Company and the Receiver, or their counsel, touching any measures which may be deemed advisable.

Very respectfully,

O. G. MILLER,
EDWARD WILLIAM WATKIN,
BENJ. WHITWORTH,
HENRY RAWSON,
JOHN WESTLAKE,
T. W. POWELL,
JOHN K. CROSS,
PETER MCLAGAN.

"B."

Erie Railway Company.—Amended Scheme of Reconstruction.

I.—No reduction in the rate of interest of the 1st Consolidated Bonds. The holders of the Sterling Morgan Loan Bonds to be entitled to the same rights as if their bonds were (and for the purposes of this scheme they shall be deemed to have been) exchanged for 1st Consolidated Mortgage Bonds on 1st September, 1875; consequently their bonds will carry interest at the rate of 6 per cent. up to and inclusive of that date, and thereafter at 7 per cent.

II.—The First Consolidated Mortgage Bonds to fund and be paid their coupons as follows:

To be Funded. *Coupons falling due.*		*To be paid in Cash.* *Coupons falling due.*	
1875	1st September.	1876	1st September, but to be paid on 1st December, 1876.
1876	1st March.	1878	1st March.
1877	1st March.	1879	1st March.
1877	1st September.	1880	1st March.
1878	1st September.		
1879	1st September.		

And, thereafter, all coupons as they fall due; but if, through the continuance of the present railroad competition in America, the Receiver should not be able to provide for the payment of the first coupon on the 1st December, 1876, the Reconstruction Trustees to have power, at the request of the Receiver, to extend the time for payment to the 1st March, 1877.

III.—Coupon bonds (either those of the present Company, or of any new company formed for the working of the railway under foreclosure) to be issued in exchange for the funded coupons mentioned in Clause II., the same to be payable in gold on 1st September, 1920 (the due date of the 1st Consolidated Bonds), with interest thereon in the meantime at 7 per cent. per annum, and to be secured by a deposit of the funded coupons; these coupon bonds to bear interest on their entire amount from 1st September, 1877, that being about the mean date of the funded coupons.

IV.—The holders of the 1st Consolidated Mortgage Bonds to deposit forthwith with the Reconstruction Trustees hereinafter named, their six coupons intended to be funded as mentioned in Clause II., receiving in exchange certificates representing them pending the creation of the new coupon Bonds; and also to sign the accompanying form of assent in order to facilitate arrangements being made, and the requisite authority of the Court being obtained for the payment in cash of the coupon becoming due on 1st September, 1876, without which it cannot be paid.

V.—The holders of the 2d Consolidated and Gold Convertible Bonds to fund their coupons as follows:

The 2d Consolidated to fund 10 half-yearly coupons from 1st June, 1875, to 1st December, 1879, both inclusive; and the Gold Convertible to fund 18¾ quarterly coupons, viz.: from 1st July, 1875, to 1st December, 1879, both inclusive.

VI.—These coupons to be funded at the present rate of interest of the bonds, viz., 7 per cent., which will make a total of 35 per cent. in the case of the 2d Consolidated, and 32¾ per cent. in the case of the Gold Convertible, for which amounts funded coupon bonds to be issued, bearing interest at the reduced rate of 5 per cent. from 1st December, 1877, to 1st June, 1883, and, thereafter, 6 per cent. If the Receiver should require the payment of the first coupon on these bonds, which will fall due on 1st June, 1878, to be postponed for six months, the Reconstruction Trustees to be empowered to grant that time.

VII.—The principal of the 2d Consolidated and Gold Convertible Bonds to be represented by new 2d Consolidated Mortgage Bonds, bearing interest at 6 per cent. from 1st December, 1879, and maturing 1st December, 1969; the funded coupon bonds under Clause VI. to mature at the same date, and rank *pari passu* with them.

VIII.—In the case of the 2d Consolidated and Gold Convertible Bonds, it is essential that the bonds themselves, with all coupons attached (and not the funded coupons alone, as in the case of the 1st Consolidated Bonds), should be forthwith deposited with the Reconstruction Trustees, who will give certificates in exchange, pending the conversion into securities of the new Company.

IX.—The property of the Company to be foreclosed by or under the direction of the Reconstruction Trustees, who shall use such bonds and coupons as shall be deposited with them as they may deem advisable for the purpose of buying in the railway after foreclosure. If the railway is bought in, after such foreclosure, a new Company shall be formed to hold and work it. Such foreclosure to be obtained under such one or more of the existing mortgages as the Reconstruction Trustees may be advised will best carry this scheme into effect.

X.—Vouchers, exchangeable in suitable amounts for bonds, to be given for fractions for which bonds cannot be given as above. The Reconstruction Trustees may, at their discretion, sell the bonds held against such fractional vouchers, and divide the proceeds among the holders of the vouchers.

XI.—One half of the shares of the new Company, whether preference or ordinary, to be issued in the names of one or more sets of Trustees, hereinafter called voting Trustees, who shall hold the same for the purpose of exercising the voting power thereon, until a dividend has been paid on the preference shares for three consecutive years, certificates being issued for the same, which shall entitle the holders to receive from the Trustees all dividends declared in respect of the shares held in trust.

XII.—The voting Trustees, or each set of them, to be named in the first instance by the Reconstruction Trustees for the time being, and to be empowered to fill up their own vacancies; every voting Trustee to be a substantial bondholder at the time of his appointment, and to resign in the event of his ceasing to be such.

XIII.—The shareholders of the present Company to be re-admitted to shares of equal amounts, preference for preference, and ordinary for ordinary, but represented as to one half by certificates under Clause XII.;* the preference shares to carry dividends at 6 per cent. per annum, payable in currency, and dependent on the net earnings of the Company in each year; such re-admission to be conditional on the payment of $3 gold per preference share, and $6 gold per ordinary share, on or before 1st December, 1876.

XIV.—The shareholders making such payments to receive for the amount thereof non-cumulative income bonds, without mortgage security, payable in gold, on 1st June, 1977, and bearing interest

* XI.?

from 1st December, 1879, also payable in gold, at 6 per cent. per annum, dependent on the net earnings of the Company in each year.

XV.—Nevertheless, it shall be at the option of any shareholder to pay, on or before 1st December, 1876, only $2 gold per preference share, or $4 gold per ordinary share; and in that case he shall be re-admitted to shares, as mentioned in Clause XIII., but shall receive no Income Bonds under Clause XIV.

XVI.—New shares may be issued to the amount of the present Shares, on which there shall be a default in making such payments as aforesaid, which may be disposed of for the benefit of the new Company, or otherwise dealt with, as the Reconstruction Trustees may determine.

XVII.—All the above new Bonds, under Clauses III., VI., VII. and XIV., to be made payable both in London and New York, and to carry voting powers so far as the law will allow; also, at the option of the holders, to be made payable to bearer, or to be registered in the names of the holders, who, however, if they choose registration, must pay all stamp duty occasioned thereby.

XVIII.—The costs of foreclosure and reconstruction, and, so far as the law will allow, any other amounts necessary or proper, in the judgment and discretion of the Reconstruction Trustees, for carrying or facilitating the carrying of this Scheme into effect, to be paid out of moneys to be raised under the Scheme, or otherwise, as those Trustees may determine.

XIX.—The following shall be the first Reconstruction Trustees:

(*a*) For the First Consolidated Mortgage and Sterling Morgan Bonds:

O. G. Miller, Esq., and H. Rawson, Esq.

(*b*) For the Second Consolidated Mortgage and Convertible Gold Bonds:

J. K Cross, Esq., M. P., and J Westlake, Esq., Q. C.

(*c*) For the Preference and Ordinary Shareholders:

P. McLagan, Esq., M.P., and B. Whitworth, Esq., M.P.

(*d*) Independent Trustees, not representing any special interest:

Sir E. W. Watkin, M.P., (with a casting vote,) and T. W. Powell, Esq.

Any vacancy among the Independent Trustees shall be filled up by the continuing Reconstruction Trustees; and any vacancy in any other of the sets, shall be filled up by the continuing member of the same set, if any, together with the Independent Trustees.

XX.—This Scheme, if found impracticable or difficult of being carried out in any of its parts, may be modified by the Reconstruction Trustees, with the unanimous assent of those of them who shall for the time being represent each interest that may suffer by the modification, but not otherwise, except as to any matter which, with the same unanimous consent, may be referred to arbitration, in which case the decision of the arbitrator, or, if more than one, a majority of them, shall be final and conclusive.

XXI.—Both in the case of the Reconstruction Trustees, except as mentioned in Clause XX., and in that of the voting Trustees, all questions to be decided by the majority at a meeting duly summoned.

"C."

AN AGREEMENT, made and entered into this 21st day of July, 1876, between the Honorable HUGH JUDGE JEWETT, of the City of New York, in the United States of America, President and Receiver of the Erie Railway Company, of the one part, and OLIVER GAULEY MILLER, of No. 11 Berkeley Square, Middlesex, Esq.; HENRY RAWSON, of Manchester, Stock Broker; JOHN KYNASTON CROSS, of No. 35 Queen's Gate Terrace, Middlesex aforesaid, Esq., M.P.; JOHN WESTLAKE, of No. 16 Oxford Square, Middlesex aforesaid, Esq, Q.C.; PETER MCLAGAN, of Belgrave Mansions, Middlesex aforesaid, Esq., M.P.; BENJAMIN WHITWORTH, of No. 11 Holland Park, Middlesex aforesaid, Esq., M.P.; Sir EDWARD WILLIAM WATKIN, of No. 6 Cleveland Row, Middlesex, M.P.; and THOMAS WILDE POWELL, of 6A Aus-

tin Friars, in the City of London, Stock Broker, hereinafter called "the Reconstruction Trustees," of the other part. WHEREAS, the Erie Railway Company, on or about the 1st day of September, 1865, issued its Sterling Bonds, to the amount of $5,000,000, bearing interest at the rate of 6 per cent. per annum, payable half yearly in gold, which Bonds constitute the loan of the said Erie Company known as the "Sterling Morgan" Loan: AND WHEREAS, by an Indenture of Mortgage dated the 1st day of September, 1870, under the seal of the said Erie Company, the property and franchises of the said Company were conveyed, subject to prior incumbrances, to the Farmers' Loan and Trust Company, a Company domiciled in the City of New York aforesaid, upon the trusts therein declared, for securing the due payment of the principal and interest of certain Bonds, therein specified, including Bonds to the amount of $5,000,000, intended to be given in exchange for the said Bonds of the said "Sterling Morgan" Loan: AND WHEREAS, there are now supposed to be outstanding Bonds to the amount of $12,076,000, secured by the said Indenture, in addition to Bonds to the amount of $4,580,000, part of the said $5,000,000 intended for exchange with the Bonds of the "Sterling Morgan" Loan, and which have not been so exchanged: AND WHEREAS, on or about the 1st day of January, 1873, the said Erie Company issued its "Convertible Gold" Bonds to the amount of $10,000,000, bearing interest at the rate of 7 per cent. per annum, payable quarterly in gold: AND WHEREAS, by an instrument of Mortgage, dated the 2nd March, 1874, under the seal of the said Erie Company, known as the 2d Consolidated Mortgage, the property and franchises of the said Erie Company were conveyed, subject to the before-mentioned Mortgage, and all prior incumbrances, to the said Farmers' Loan and Trust Company upon the trusts therein declared, to secure the payment of certain Bonds, therein particularly described, to the amount of $40,000,000, including the said $10,000,000 "Convertible Gold" Bonds, of which Bonds, so secured by the said last mentioned Mortgage, there are now supposed to be outstanding Bonds to the amount of $15,000,000, in addition to said "Convertible Gold" Bonds, to the amount of $10,000,000: AND WHEREAS, default has been made in the payment of the interest on the Bonds secured by the above mentioned Mortgages respectively, and in consequence of such default in the payment of interest, the principal of the said Bonds has become due and payable, if the holders shall elect to demand the same: AND WHEREAS, suits for foreclosure and sale of the property comprised in the said Indentures of Mortgage have been instituted by the said Farmers' Loan and Trust Company in the Supreme Court of the State of New York, and in the States of New Jersey and Pennsylvania, in the United States of America, which suits are now pending: AND WHEREAS, by an Order dated the 15th day of June, 1875, made by the Supreme Court of New York, and by Order of the proper Courts of the States of New Jersey and Pennsylvania, the said Hugh Judge Jewett was appointed Receiver of the property and franchises of the said Erie Railway, in the said suits of the Farmers' Loan and Trust Company against the Erie Railway Company: AND WHEREAS, by far the greater part of Bonds secured by the said recited Mortgages and now outstanding, and a large proportion of the Preference and Ordinary Stock respectively of the Erie Company, are believed to be held by persons resident within the United Kingdom of Great Britain and Ireland: AND WHEREAS, several public meetings of the holders of the Bonds so secured as aforesaid, and the Preference and Ordinary Stock respectively, have been held in London aforesaid, for the purpose of considering what steps should be taken for the reorganization of the said Erie Company, or otherwise, for the protection of their interests in the Company: AND WHEREAS, at such public meeting, the Committee hereinafter referred to as the "Reconstruction Committee," were appointed for the purpose of forming a scheme for the reorganization of the said Erie Company: AND WHEREAS, the said Reconstruction Committee duly formed a scheme, which was approved by a public meeting of the bond and stockholders, held at the City Terminus Hotel, in London aforesaid, on the 23d June last: AND WHEREAS, at a meeting of the said Reconstruction Committee, held on the 28th June last, the said Committee, in pursuance of a direction given at the said public meeting of the 23d of June, appointed the said Oliver Gauley Miller, Henry Rawson, John Kynaston Cross, John Westlake, Peter McLagan, Benjamin Whitworth, Edward William Watkin, and Thomas Wilde Powell, Reconstruction Trustees, for the purpose of carrying out the said scheme:

AND WHEREAS, certain amendments having been made in the said scheme by the Reconstruction Trustees, the same as amended was finally unanimously approved and adopted in the form or to the effect set out in the schedule hereto [*Note.—Said schedule is the last foregoing document, marked "B"*] at a public meeting of the said stock and bondholders, convened by advertisement, and held at the City Terminus Hotel, aforesaid, on the 13th day of July, 1876: AND WHEREAS, the said Hugh Judge Jewett is satisfied that the said scheme as set forth in the schedule hereto, is just and equitable, and that it is desirable in the interests of the Erie Company and of its creditors that it should be carried out: Now, in consideration of the premises, and for the better protection of the parties in interest, it is hereby agreed as follows:

1. The Reconstruction Trustees hereby jointly and severally, but without incurring any personal liability, agree with the said Hugh Judge Jewett, as such President and Receiver as aforesaid, that they (the said Reconstruction Trustees) will use their best endeavors to carry out the provisions of the Scheme set out in the Schedule hereto, with any modifications therein that may be made under the powers in that behalf therein contained.

2. The said Hugh Judge Jewett, as such President and Receiver as aforesaid, hereby agrees with the said Reconstruction Trustees, that on the said Scheme being approved by the Board of Directors of the said Erie Company, he will use his best endeavors to carry out such Scheme according to its terms, and with any alterations that may be made therein under the powers aforesaid, under the direction of the Courts which appointed him to be such Receiver as aforesaid, and to which he is responsible.

As witness the hands of the parties.

THE ERIE RAILWAY COMPANY,
By H. J. JEWETT, *President and Receiver.*
H. J. JEWETT,
O. G MILLER,
JOHN K. CROSS,
PETER MCLAGAN,
JOHN WESTLAKE,
EDWARD WILLIAM WATKIN,
BENJAMIN WHITWORTH,
HENRY RAWSON,
T. W. POWELL.

Witness to all the above signatures,
H. C. MORRIS, *Solicitor*, 6 Old Jewry, London.

"D."

At a special meeting of the Board of Directors of the Erie Railway Company, held at No. 187 West Street, New York City, on Tuesday, the 8th day of August, 1876, the following was unanimously adopted:

"*Whereas*, The President and Receiver of this Company has agreed with the representatives of the shareholders of the Company, and the first and second consolidated mortgage bondholders, upon a scheme or programme for its reorganization, and has presented the same to this Board for its approval, which scheme, or programme, is in the words and figures:

(*The same as in Schedule "B."*)

"*Now, therefore, be it Resolved:*

"*First.* That the same is hereby approved, and that the counsel of this Company are hereby requested to procure from the Court an order, whereby the Receiver of this Company will be authorized to do whatever may be necessary to put said scheme, or programme, into operation, and to conduct the same to its full execution.

"*Second.* That, as it may be necessary in the administration of such scheme, that the Receiver should have an office and a representative in the City of London, the counsel of this Company is also requested to procure from the Court an order authorizing the Receiver to make such appointment, and pay all the expenses attendant thereto."

I hereby certify that the foregoing extract of the minutes of the Board of Directors of the Erie Railway Company is a true and correct copy thereof.

Dated New York, August 12th, 1876. E. D. HAMMOND, *Ass't Secretary.*

At a Special Term of the Supreme Court of New York, held at the Court House in the City of New York, on the 12th day of August, 1876.

Present—Hon. CHARLES DONOHUE, *Justice.*

(Title of Actions.)

On the petition of the defendant, the Erie Railway Company, verified on the 12th day of August, instant, and on motion of Joseph Larocque, Esq., of counsel for said defendant, and after reading the papers in said petition referred to, and upon due notice to the plaintiffs, which is evidenced by the admissions of their attorneys appearing endorsed on the said petition, and upon the consent of the attorney for said Davis, Trustee, filed herewith:

And it further appearing to the Court that the plan of adjustment and reorganization to said petition attached, is, in its essential features, reasonable and proper to be carried into effect, and that so far as any modifications may be needful, they can be made, and as may be needful, can be hereafter submitted to this Court for sanction:

And it further appearing that the agreement mentioned in said petition is reasonable, and that the same should be aided by the Receiver, in due reference to what may be the plan to be actually carried into effect:

Now, therefore, this Court, in reference to the recitals aforesaid, does authorize Hugh J. Jewett, the Receiver herein, to aid, as far as he may consistently with his general duty as Receiver, and the rights of prior incumbrancers, in carrying such plan and agreement into effect; and in so doing, he is hereby authorized to employ and pay the expenses of an agent in London, to assist in the execution of such plan and agreement, and to keep the Receiver so fully informed that he may act intelligently in that regard.

WM. WALSH, *Clerk.*

No. 7.

At a Special Term of the Supreme Court of the State of New York, held at the Court House in the City of New York, on the 20th day of February, A. D. 1877.

Present—HON. CHARLES DONOHUE, *Justice.*

THE FARMERS' LOAN AND TRUST CO., Trustee, &c., *agst.* THE ERIE RY. CO, *et al.*	*Pet. and Order for leave to pay a certain coupon falling due under the mortgage of September first,* 1870.
J. C. B. DAVIS, Trustee, &c., *agst.* THE ERIE RY. CO., *et al.*	

On reading and filing the petition of Hugh J. Jewett, heretofore appointed Receiver in the above entitled actions, bearing date the 17th day of February, 1877, with notice of presentation of said petition thereto annexed, and also proof of due service of copies of said petition and notice on the attorneys for the respective parties to said actions, and on motion of William W. Macfarland, Esq., of counsel for said petitioner, after hearing Herbert B. Turner, Esq., of counsel for the Farmers' Loan and Trust Company, trustee, and Henry A. Tailer, Esq., of counsel for J. C. Bancroft Davis, Trustee, and due deliberation having been had:

It is ordered, that the Receiver be, and he is hereby authorized to provide for the payment of, and to pay on the first day of March next ensuing, so many of the interest coupons falling due on the first day of September, one thousand eight hundred and seventy-six, of bonds issued by the defendant, the Erie Railway Company, under the mortgage of that Company of September first, one thousand eight hundred and seventy, as on the said first day of March, or thereafter, may be presented for payment by or through the said Trustees in the said petition mentioned; and if it should become necessary for the Receiver temporarily to obtain a loan for the necessary amount of money for this purpose, the amount thereof will constitute a lien upon all and singular the mortgaged premises prior to the lien of the mortgage under and in pursuance of which such bonds and coupons were made and issued.

(A copy.) HENRY A. GUMBLETON, *Clerk.*

(*Title of Actions.*)

To the Supreme Court of the State of New York:

HUGH J. JEWETT, Receiver of the Erie Railway in the above entitled actions, begs leave respectfully to represent:

That, at the request of the holders of bonds and stock of the Erie Railway Company, of its Board of Directors, and with the consent of this Court, he proceeded to Europe in June last, for the purpose of conferring with such bond and shareholders with regard to their interests, and the best plan to adopt for the protection thereof, and for the improvement of the property of the defendant, the Railway Company.

That after arriving in London, where he spent the greater portion of his time, he had conferences with a large number of the individual bond and shareholders, and that he also visited Scotland, where the bonds and stock of the Company are held to a large amount, and had conferences with a large number of the holders thereof individually and with their representatives.

That previous to his visiting London, a public meeting of the bond and shareholders, to which representatives were invited from all points in Europe, and which was largely attended, was held in London, for the purpose of considering the condition of the affairs of the defendant Company, at which meeting a committee was appointed to consider and devise more in detail the plan for the protection and future representation of their interests, consisting of the following named persons:

E. W. WATKIN, M. P., Chairman,	HENRY RAWSON,	G. SMITH,
CECIL BEADON, K. C. S. T.,	P. MCLAGAN, M. P.,	J. C. CONYBEARE,
J. K. CROSS, M. P.,	J. M. DOUGLASS,	A. H. MONCUR,
B. WHITWORTH, M. P.,	W. LEEMING,	PHILIP ROSE,
J. WESTLAKE, Q. C.,	W. WEIR,	O. G. MILLER,
		ROBERT FLEMING.

That the result of the deliberations of such committee was the appointment of a Board of Trustees, representing the various interests involved, consisting of the following named persons:

P. McLagan, Esq., M. P., and B. Whitworth, Esq.. M. P., representing the shareholders.

J. K. Cross, Esq., M.P., and J. Westlake, Esq., Q.C., representing the holders of bonds under the mortgage of Feb. 4, 1874.

O. G. Miller, Esq., and H. Rawson, Esq., representing the holders of bonds under the mortgage of Sept. 1, 1870; and

Sir Edward W. Watkin, M.P., and T. W. Powell, Esq., representing at large all interests.

And afterwards the adoption of a programme, looking to the future reorganization of the company.

That your petitioner had various conferences with such Committee and such Trustees, which resulted somewhat in a modification of the plan previously agreed upon, and which was subsequently submitted to

public meetings of the bond and shareholders, held both in London, England, and Glasgow, Scotland, and unanimously approved at such meetings respectively.

That, after such meetings, and during the stay of your petitioner in London, he entered into a contract with the said Trustees, in which a programme or scheme for the reorganization of the Erie Railway Company was fully stated; such contract, however, being subject to the approval of the Board of Directors of the Railway Company and of this Court.

That said contract was forwarded for the action of the Board, and, if approved by it, then for the action of this Court.

That the Board of Directors of the Erie Railway Company, the defendant in these actions, did approve such contract, and, on the 12th day of August, 1876, filed its petition in this Court, in which a communication from said Trustees to one of the plaintiffs in these suits—The Farmers' Loan and Trust Company—referring to said contract and to the plan of reorganization, a copy of the plan of reorganization, a copy of the agreement so made, as aforesaid, by the Receiver, and a resolution of the Board approving the same, were all made exhibits thereto. A copy of which petition, with its exhibits, together with the order of the Court thereon is hereto attached, marked Exhibit "A." [*Papers, &c., forming said Exhibit will be found hereinbefore, in No.* 6.]

Your petitioner further represents, that by the terms of said plan of reorganization and agreement, as subsequently modified in accordance with the provisions thereof, the coupon of the bonds issued under the mortgage of Sept. 1, 1870, maturing on the 1st day of September, 1876, was to be paid on the 1st March, 1877.

Your petitioner also represents that, as he is advised and believes, coupons representing about $8,000,000 of the bonds issued under said mortgage of Sept. 1, 1870, have been delivered to said Trustees, and of the bonds issued under the mortgage of Feb. 4, 1874, about $10,000,000 have been delivered to said trustees, the holders thereof assenting to such programme of reorganization.

That said trustees advise your petitioner, that they regard the programme of reorganization a success, if the Company and the Receiver perform their part of the contract, or comply with their part of the programme. That the filing of accounts by the bond and shareholders has, to the present time, been unusually successful. That if the payment of the coupon, to be made on the 1st of March next, as stipulated in said agreement, is provided for, such assents will be much hastened, and the final execution of the programme placed beyond doubt.

In these representations your petitioner has entire confidence.

Your petitioner further represents, that the said trustees are urgent in their demands that the payment of such coupon be promptly provided for, and state that a delay in making such payment would create doubts in the minds of the bond and shareholders, either as to the ability of the Company or the Receiver, or of the intention of either to carry out such agreement, and would give to those who are disposed to avail themselves of their legal rights, regardless of the equities of those whose interests may not be so amply secured, a pretext for charging bad faith against all the parties to said agreement, and the action heretofore had.

Under ordinary circumstances, your petitioner would not hesitate to advise that the payment of such coupon be authorized and promptly made, but the circumstances attending the management and operation of railroads for some time past have been remarkably and unusually disastrous in their results. In addition to the general depression of the business of the country, for some months the contest between the main lines reaching the seaboard for traffic became so active, that the rate of compensation for the service rendered was wholly unremunerative. This contest your petitioner sought to avoid, and labored assiduously to remove the irritating cause; but, to maintain the position of the company as a transportation line, he had to follow the others in whatever rates for transportation were established or became current. In addition to this, and about the time a partial reconciliation of the differences between the various companies was arrived at, the winter became exceedingly severe, the roads became blocked with snow and ice to such an extent as to embarrass seriously the movement of trains and traffic thereon, and to cause

increased expense in their management and operation. The result of all of which is a largely reduced net earning for the last few months' operations, and consequent inability out of the net earnings to meet the usual demands to the extent which could have been reached had these difficulties not existed.

Your petitioner further represents, that if this coupon is provided for, it may involve a temporary increase of the current obligations of the company, but no increase of its ultimate liability. In the judgment of your petitioner, the property of the company, as will appear from statements heretofore made, and from accounts from time to time filed in this Court, and from the inventory of the property of the company, now about ready to be filed, is, beyond doubt, in value far beyond the entire indebtedness of the company; and no detriment could finally befall any one, because of any effort which may be made to carry out the programme of reorganization heretofore agreed upon.

Your petitioner believes, also, that a failure to pay the coupon in accordance with the terms of said agreement may endanger the entire programme of reorganization, which programme and the carrying out thereof your petitioner believes to be vital to the interests of the shareholders of the Erie Company, and may be vital to the interests of those who have other relations to the company than those of mere bondholders.

Whilst your petitioner has not felt authorized to take any steps in the direction of providing for the payment of such coupon, without the full authority and direction of the Court, he under the circumstances recommends that authority be given him to pay, on the first day of March next, the coupons upon the bonds issued under the said mortgage of September 1, 1870, maturing on the first of September last, and which coupons the holders thereof and of the bonds assenting to such programme of reorganization, may at that time have filed with the said trustees; and from time to time thereafter to pay such of said coupons as may be filed with the trustees by the holders thereof, and of the bonds to which the same belong, such holders assenting to such programme of reorganization.

H. J. JEWETT, *Receiver.*

City and County of New York, ss.:

HUGH J. JEWETT, of said city, being duly sworn, says: that he is the petitioner named in the foregoing petition; that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes the same to be true.

H. J. JEWETT.

Sworn to before me, this 17th day of February, 1877.

C. G. BARBER, *Notary Public.*

No. 8.

SUPREME COURT.

THE FARMERS' LOAN AND TRUST CO.

agst.

THE ERIE Ry. Co. and J. C. B. DAVIS, Trustee.

J. C. B. DAVIS, Trustee,

agst.

THE ERIE Ry. Co. and THE FARMERS' LOAN AND TRUST CO., &c.

Orders authorizing consent to arbitration of claims against London Banking Association, and compromise of same.

At a Special Term of this Court, held at the City Hall, March 31, 1877.

Present—Hon. A. R. LAWRENCE, *Justice.*

On reading and filing the annexed stipulation, and on motion of Mr. Eaton, of counsel for Davis, Trustee, it is ordered, that Mr. Jewett, the Receiver herein, be, and he is hereby authorized to consent to an arbitration of the claims made in the suit now pending in London, in which said Receiver and the Erie Railway Co. are plaintiffs, and the London Banking Association (Limited) is defendant, and to discontinue said suit upon the basis of any award that may be made upon such arbitration, and generally to comply therewith.

(A copy.) HENRY A. GUMBLETON, *Clerk.*

(Title of Actions.)

At a Special Term of this Court, held at the City Hall, March 31st, 1877.

Present—Hon. A. R. LAWRENCE, *Justice.*

On reading and filing the annexed stipulation, and on motion of Mr. Eaton, of counsel for Davis, trustee, it is ordered, that Mr. Jewett, the Receiver herein, be and is hereby authorized to make a compromise and settlement, and to give a full discharge of the claims made in the suit now pending in London, in which said Receiver and the Erie Railway Co. are plaintiffs, and the London Banking Association (Limited) are defendants, on such terms and conditions as said Receiver shall approve.

(A copy.) HENRY A. GUMBLETON, *Clerk.*

(Title of Actions.)

We hereby consent to the entry of an order, without further notice to us, authorizing the Receiver (H. J. Jewett) appointed in this suit to consent to an arbitration, and to make a compromise of the claims made in the suit pending in London, in which he and the Erie Railway Company are plaintiffs, and the London Banking Association (Limited) is defendants.

March 17, 1877.

TURNER, KIRKLAND & McCLURE,
Attorneys for F. L. & T. Co.

SHIPMAN, BARLOW, LAROCQUE & MACFARLAND,
Attorneys for Erie Ry. Co.

HENRY A. TAILER,
Attorney for Davis, Trustee.

No. 9.

At a Special Term of the Supreme Court of the State of New York, held at the Court House, in the City and County of New York, on the 7th day of November, 1877.

Present—Hon. Charles Donohue, *Justice.*

The Farmers' Loan and Trust Company, Trustee, *Plaintiff,* *against* The Erie Railway Company, James H. Bertholf, Elizabeth J. Blair, as Administratrix of Nathaniel B. Blair, deceased, James Dwyer, Abram Dwyer, The Farmers' and Mechanics' National Bank of Buffalo, William H. Gurney, Archibald, H. Gates Russell H. Heywood, John Siemon, Alexander Muir, as Administrator of Annie Roe, deceased, Orrin O. Olmstead, Lydia Page, Eliza M. Page, as Administratrix of Howard M. Page, deceased, George W. Randall, Nicholas Rassell, Aaron Smith, Solomon Scheu, George Talbot, Austin Thomas, Patrick Whalen, Charles Zaggel, and William Zaggel, *Defendants.*	*Judgment of Sale.*

This action having been brought on to be heard upon the summons and complaint, and the amended and supplemental summons and complaint duly filed therein, and the answer of the defendant The Erie Railway Company, upon the appearances of the Erie Railway Company, by Messrs. Shipman, Barlow, Larocque & McFarland, its attorneys; William H. Gurney, by Franklin D. Locke, Esq., his attorney; Solomon Scheu, by Messrs. Humphrey & Lockwood, his attorneys; Russell H. Heywood, by Messrs. Wadsworth, Hopkins & White, his attorneys; The Farmers' and Mechanics' National Bank of Buffalo, by Messrs. J. B. & H. B. Greene, its attorneys; Lydia Page, by Robert Snow, Esq., her attorney; George W. Randall, Esq., by George W. Daggett, Esq., his attorney; Austin Thomas, by Messrs. Ansley & Vreeland, his attorneys; Orrin O. Olmstead, by A. A. Howard, Esq., his attorney; Eliza M. Page, as Administratrix of Howard M. Page, deceased, by E. H. Pinney, Esq., her attorney; James Dwyer, by George W. Millspaugh, Esq., his attorney; John Siemon, by D. M. Dewitt, Esq., his attorney; Abram Dyer, by J. H. Waring, Esq., his attorney; Archibald H. Gates, by Messrs. Rumsey & Miller, his attorneys; Patrick Whalen, by Joel L. Walker, Esq., his attorney; James H. Bertholf, by George W. Greene, Esq., his attorney; Charles B. Germain, guardian *ad litem* of William Zaggel, Charles Zaggel, and George Talbot, by Messrs. Laning, McMillin & Gluck, their attorneys; and Aaron Smith, by Messrs. Ostrander & McKoon, his attorneys; and upon the affidavit of Herbert B. Turner, one of the attorneys for the plaintiff, verified November 7th, 1877, and the affidavit of J. H. Henshaw, verified November 3d, 1877; whereby it appears:

That the said action is brought to foreclose a certain mortgage or deed of trust made by the defendant, the Erie Railway Company, to the plaintiff, the Farmers' Loan and Trust Company as trustee, which mortgage is hereinafter more particularly described;

That the complaint in said action was duly filed in the office of the Clerk of the City and County of New York, on the 19th day of June, 1875;

That after the filing of said complaint, a notice of the pendency of this action, containing the names of the parties thereto, the object of the action, and a description of the property in each county where the same was filed, affected thereby, the date of the mortgage in question to the plaintiff, and the times and places of recording the same, was duly filed with the clerk of the county of New York, on the 24th day of June, 1875; with the clerk of the county of Chemung, on the 25th day of June, 1875; with the clerk of

the county of Wyoming, on the 25th day of June, 1875; with the clerk of the county of Steuben, on the 25th day of June, 1875; with the clerk of the county of Genesee, on the 25th day of June, 1875; with the clerk of the county of Livingston, on the 26th day of June, 1875; with the clerk of the county of Cattaraugus, on the 25th day of June, 1875; with the clerk of the county of Chautauqua, on the 25th day of June, 1875; with the clerk of the county of Allegany, on the 25th day of June, 1875; with the clerk of the county of Tioga, on the 25th day of June, 1875; with the clerk of the county of Delaware, on the 25th day of June, 1875; with the clerk of the county of Orange, on the 25th day of June, 1875; with the clerk of the county of Rockland, on the 25th day of June, 1875; with the clerk of the county of Sullivan, on the 25th day of June, 1875; with the clerk of the county of Broome, on the 24th day of June, 1875; the above mentioned counties being counties in which the mortgaged premises and franchises, or some part thereof, are situated;

That on or about the 24th day of September, 1877, the summons and complaint in this action were duly amended by making new parties defendant and otherwise, and that the complaint as so amended was duly filed in the office of the clerk of the City and County of New York, on the said 25th day of September, 1877, and has been served with the supplemental summons on the Erie Railway Company, Solomon Scheu, the Farmers' and Mechanics' National Bank of Buffalo, Patrick Whalen, George Talbot, Orrin O. Olmstead, Nicholas Rassel, Abram Dyer, William Zaggel, Charles Zaggel, Archibald H. Gates, Elizabeth J. Blair, as administratrix of Nathaniel B. Blair, deceased, Aaron Smith, James H. Bertholf, and Alexander Muir, as administrator of Annie Roe, deceased, defendants herein, more than twenty days previous to the date hereof; and that all the defendants herein who have not been personally served with the said amended and supplemental summons and complaint have been served with the same, by delivery thereof, to their respective attorneys, who have appeared herein for them respectively, as hereinbefore stated;

That after the filing of said amended and supplemental complaint as aforesaid, and more than twenty days since, an amended notice of the pendency of this action, in all respects according to law and the practice of this Court, containing correctly and truly all the particulars required by law to be stated in such cases, including the names of the parties thereto, the object of the action, a description of the property in each county where the same was filed, affected thereby, the date of the mortgage in question to the plaintiff, the parties thereto and the times and places of recording the same, was duly filed in the office of the clerk of the said county of New York, on the 25th day of September, 1877; and in the office of the clerk of the said county of Delaware on the 28th day of September, 1877; in the office of the clerk of the county of Sullivan, on the 6th day of October, 1877; in the office of the clerk of the county of Broome, on the 27th day of September, 1877; in the office of the clerk of the county of Chemung, on the 27th day of September, 1877; in the office of the clerk of the county of Chautauqua, on the 28th day of September, 1877; in the office of the clerk of the county of Cattaraugus, on the 29th day of September, 1877; in the office of the clerk of the county of Wyoming, on the 28th day of September, 1877; in the office of the clerk of the county of Tioga, on the 27th day of September, 1877; in the office of the clerk of the county of Livingston, on the 28th day of September, 1877; in the office of the clerk of the county of Monroe, on the 27th day of September, 1877; in the office of the clerk of the county of Allegany on the 29th day of September, 1877; in the office of the clerk of the county of Rockland, on the 27th day of September, 1877; in the office of the clerk of the county of Genesee, on the 6th day of September, 1877; in the office of the clerk of the county of Steuben, on the 9th day of October, 1877; in the office of the clerk of the county of Orange, on the 16th day of October, 1877; in the office of the clerk of the county of Erie, on the 27th day of September, 1877; in the office of the clerk of the county of Niagara, on the 2d day of October, 1877; and that since the filing of the said amended notice of the pendency of this action the complaint therein has not been amended by making new parties to the action, or so as to affect other property not described in the said amended complaint and in said notice of the pendency of this action, or so as to extend the claims of the plaintiffs against the mortgaged premises;

That the defendant, the Erie Railway Company, has appeared by its attorneys, and has answered, admitting the truth of the allegations made in the amended and supplemental complaint; that the following defendants have also appeared by their respective attorneys, namely: William H. Gurney, Solomon Scheu, Russell H. Heywood, The Farmers' and Mechanics' National Bank of Buffalo, Lydia Page, George W. Randall, Austin Thomas, Orrin O. Olmstead, Eliza M. Page, as administratrix of Howard M. Page, deceased; James Dwyer, John Siemon, Abram Dyer, Archibald H. Gates, Patrick Whalen, James H. Bertholf, Charles B. Germain, guardian *ad litem* of William Zaggel; Charles Zaggel, George Talbot, Aaron Smith;

That none of the said defendants have appeared or answered, except as aforesaid, and no other defendant has appeared herein; that all the defendants appearing herein, have waived service of all notices and papers herein, except the defendants the Erie Railway Company, George Talbot, Charles Zaggel, William Zaggel and Solomon Scheu, and that none of the defendants are absentees or persons of unsound mind, and the defendant William Zaggel being an infant, and the only infant among the said defendants, has appeared by his guardian *ad litem*, duly appointed, but has not answered or demurred to the complaint herein;

That the plaintiff is a corporation duly created and organized under the laws of the State of New York, with full power and authority, among other things, to receive the conveyance made to the plaintiff, in trust, by way of mortgage, on the 4th day of February, 1874, as in the complaint in this action particularly set forth;

That the defendant, the Erie Railway Company, is a corporation duly created and organized under the laws of this State, under and by virtue of an act of the Legislature, passed April 4, 1860, and sundry acts supplementary thereto, from which said act, as well as from the general laws of this State in relation to railroad companies, the said Erie Railway Company derives and possesses its franchises, powers and privileges;

That by an act of the Legislature of this State, passed April 24th, 1832, entitled "An Act to incorporate the New York & Erie Railroad Company," a corporation was created under the name of the New York & Erie Railroad Company, for the purpose of constructing, owning and operating a line of railroad for the carriage of freight and passengers between the City of New York and Lake Erie, in this State;

That by the said act and other supplementary acts of the Legislature of this State, and by certain statute laws of the State of Pennsylvania, the said New York & Erie Railroad Company was authorized to construct and operate a certain part of its line of railroad, namely, about forty-two and one-half miles thereof, through the Counties of Pike and Susquehanna, in the said State of Pennsylvania;

That the said corporation subsequently lawfully acquired certain franchises, privileges, powers and certain leasehold estates and interests in the State of New Jersey;

That afterwards the said New York & Erie Railroad Company created at various dates, by way of mortgage, five separate liens upon its property and franchises, each for the security of certain bonds of the said company therein particularly described, which said mortgages were and are as follows, that is to say:

A mortgage, known as the first mortgage, to secure a series of bonds, whereof there are $2,483,000 of the principal sum thereof now outstanding and unpaid, which become payable on the first day of May, 1897;

A mortgage, known as the second mortgage, to secure a series of bonds, whereof there are $2,174,000 of the principal sum thereof now outstanding, and which are payable September 1, 1879;

A mortgage, known as the third mortgage, to secure a series of bonds, whereof there are now outstanding and unpaid $4,852,000 of the principal sum thereof, which become payable March 1st, 1883;

A mortgage, known as the fourth mortgage, to secure a series of bonds, whereof there are now outstanding and unpaid $2,937,000 of the principal sum thereof, which become payable October 1, 1880;

A mortgage, known as the fifth mortgage, to secure a certain other series of bonds, whereof there are

now outstanding $709,500 of the principal sum thereof, and which become payable on the first day of June, 1888; the interest upon the said several series of bonds having been paid from time to time as such interest became due and payable;

That the said New York & Erie Railroad Company operated its road until some time in the year 1859, when the said company became insolvent, and that such proceedings were thereupon and thereafter had, that all and singular the property and franchises of the said company were foreclosed and sold, and the defendant in this action, the said Erie Railway Company, acquired, succeeded to, and became lawfully possessed of the said property and franchises, including all the property, rights, privileges and franchises of the said New York & Erie Railroad Company in the said States of New Jersey and Pennsylvania respectively, title to all of which last-mentioned rights, privileges and franchises was subsequently confirmed in and to the said defendant The Erie Railway Company, by acts of the Legislatures of the said States of New Jersey and Pennsylvania respectively;

That afterwards, and on or about the first day of September, 1870, the said defendant, the Erie Railway Company, being so possessed as aforesaid of all the aforesaid property, rights, privileges and franchises, and being thereto duly authorized by law, executed and delivered to the plaintiffs in this action a certain indenture, wherein and whereby the said defendant company conveyed to the plaintiffs in trust, by way of mortgage, all and singular the railway of the said company, from and including Piermont, on the Hudson River, to and including the final terminus of the said railway on Lake Erie, and the railway known as the Newburgh Branch, from Newburgh to the main line; and also all that part of the railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York; and also all other railways belonging to the said company, in the States of New York, Pennsylvania and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the said company; and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood, and supplies of every kind belonging or appertaining to the said company, and all tolls, incomes, issues, profits arising out of the said property, and all rights to receive or recover the same; also all the estate, right, title and interest, terms and remainder of terms, franchises, privileges, and rights of action of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York & Erie Railroad Company, or unto the Erie Railway Company, by the Union Railroad Company, the Buffalo, New York & Erie Railroad Company, by the Buffalo, Bradford & Pittsburgh Railroad Company, by the Rochester & Genesee Valley Railroad Company, and by the Long Dock Company; which said indenture was afterwards duly recorded in each one of the several counties in which the mortgaged premises or some part thereof were situate;

That the said mortgage was made to secure certain bonds of the said Erie Railway Company in the said indenture particularly set forth and described, whereof the said company issued at different dates, bonds to the amount of $16,656,000 gold in the aggregate, including those bonds in the said mortgage called convertible bonds, and bearing date September 1, 1865, all of which bonds are now outstanding and secured by the said mortgage; and

That on the 1st day of November, 1877, there was interest accrued, due and payable upon the said bonds to the amount of $2,573,245, gold, and that since that date to the date hereof, there has further accrued of said interest $3,240;

That afterwards and on the 4th day of February, 1874, the said defendant the Erie Railway Company, being thereto duly authorized by law, executed and delivered to the plaintiff, as trustee, a certain other trust deed or mortgage, the same being the mortgage to foreclose which this action is brought, wherein and whereby said defendant company did convey to the plaintiff, as trustee, for the uses and purposes in the said mortgage specified, all and singular the railways of the said company, from and including Piermont, on the Hudson River, to and including the final terminus of the said rail-

way on Lake Erie, and the railway, known as the Newburgh Branch, from Newburgh to the main line; and also all that part of the railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York; and also all other railways belonging to the company in the States of New York, Pennsylvania and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the said company, and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood, and supplies of every kind belonging or appertaining to the said company; and all tolls, income, issues and profits arising out of said property, and all rights to receive or recover the same; also, all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action, of whatsoever name or nature in law or in equity, conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, by the Union Railroad Company, by the Buffalo, New York and Erie Railroad Company, by the Buffalo, Bradford and Pittsburgh Railroad Company, by the Rochester and Genesee Valley Railroad Company, and by the Long Dock Company:

That the said mortgage to the plaintiff, of February 4, 1874, last mentioned, was within a reasonable time after the date thereof, and before the commencement of this action, duly recorded in the County Clerk's office of each of the several counties in this State wherein the said mortgaged premises or parts thereof were and are situated, that is to say, in the counties of New York, Chemung, Wyoming, Steuben, Genesee, Broome, Livingston, Cattaraugus, Allegany, Chautauqua, Tioga, Delaware, Orange, Rockland, Sullivan, Erie, Niagara, Monroe;

That the said mortgage was also duly recorded in the proper offices in the State of New Jersey, in which State a part of the mortgaged premises and franchises were and are situate, as required by the laws of the said State; that is to say, in the counties of Hudson, Bergen and Passaic;

That the said mortgage was also duly recorded in the proper offices in the State of Pennsylvania, in which State a part of the mortgaged premises and franchises were and are situate, as required by the laws of the said State; that is to say, in the counties of Pike and Susquehanna;

That the said mortgage was executed and delivered to the plaintiff, as trustee, to secure the payment of certain bonds of the defendant the Erie Railway Company, whereof the following bonds, secured by the said mortgage, and no more, are outstanding, due and unpaid, that is to say: bonds of the said company to the amount in the aggregate of $10,000,000, dated January 1, 1873, which bonds were 11,000 in number, 9,000 thereof being for the sum of $1,000 each, and 2,000 for the sum of $500 each; all of which bonds were and are payable in gold on the first day of January, 1903, and all of which were and are now outstanding and unpaid;

That each of the said bonds had and has interest warrants or coupons attached thereto representing interest to become due on the said bonds each three months during the currency thereof;

That of the said interest warrants, the following became due and payable at the dates hereinafter mentioned, and still remain due and unpaid at the date hereof, with interest thereon as follows, that is to say:

July 1, 1875, No. 10	$175,000 00
Interest on same to Nov. 1, 1877	28,583 33
Oct. 1, 1875, No. 11	175,000 00
Interest on same to Nov. 1, 1877	25,520 83
Jan. 1, 1876, No. 12	175,000 00
Interest on same to Nov. 1, 1877	22,458 33
April 1, 1876, No. 13	175,000 00
Interest on same to Nov. 1, 1877	19,395 83
July 1, 1876, No. 14	175,000 00
Interest on same to Nov. 1, 1877	16,333 33

Oct. 1, 1876, No. 15	$175,000 00
Interest on same to Nov. 1, 1877	13,270 83
Jan. 1, 1877, No. 16	175,000 00
Interest on same to Nov. 1, 1877	10,208 33
April 1, 1877, No. 17	175,000 00
Interest on same to Nov. 1, 1877	7,145 83
July 1, 1877, No. 18	175,000 00
Interest on same to Nov. 1, 1877	4,083 33
Oct. 1, 1877, No. 19	175,000 00
Interest on same to Nov. 1, 1877	1,020 83

amounting in the aggregate to $1,898,020.80, and that since the said 1st day of November to the date hereof, further interest has accrued on the said past due interest warrants to the amount of $2,384;

Also certain other bonds of the said company, amounting in the aggregate to the sum of $15,000,000, dated the 2d day of March, 1874, payable in gold on the 2d day of March, 1894, which bonds were 15,000 in number, and for the sum of $1,000 each;

That each of the said bonds has and had interest warrants or coupons attached thereto, representing interests to become due on the said bonds each six months during the currency thereof;

That of the said interest warrants the following became due and payable at the dates hereinafter mentioned, and still remain due and unpaid at the date hereof, with interest thereon as follows, that is to say:

June 1, 1875, No. 3	$525,000 00
Interest to Nov. 1, 1877	88,812 50
Dec. 1, 1875, No. 4	525,000 00
Interest to Nov. 1, 1877	70,437 50
June 1, 1876, No. 5	525,000 00
Interest to Nov. 1, 1877	52,062 50
Dec. 1, 1876, No. 6	525,000 00
Interest to Nov. 1, 1877	33,687 50
June 1, 1877, No. 7	525,000 00
Interest to Nov. 1, 1877	15,312 50

amounting in the aggregate to $2,885,312.50, and that since the said 1st day of November to the date hereof, further interest has accrued on the said past due interest warrants to the amount of $3,572.90.

That payment of the said interest warrants upon said two last mentioned series of bonds, was duly demanded of the said defendant company, at or about the date when the same became due, and was refused by the said company, and the said company has ever since and still does neglect and refuse to pay the same or any part thereof, and more than six months has elapsed since such default;

That by reason of such default, the principal sum of the said bonds, together with the aforesaid interest thereon, has become and now is due and payable;

That at the date hereof there is due to the plaintiff upon the said bonds, secured to the plaintiff by the said mortgage of the defendant, the Erie Railway Company, to the plaintiff, of February 4, 1874, principal amounting, in the aggregate, to the sum of $25,000,000; interest amounting in the aggregate to $4,789,290.20, and that the total amount so due for principal and interest is $29,789,290.20.

That no proceedings at law have been had or taken for the recovery of the money secured by the aforesaid mortgage to the plaintiff, dated February 4, 1874;

That the defendant the Erie Railway Company is insolvent, as alleged in the complaint;

That at the time of the commencement of this action, by an order of this Court, dated the 15th day of June, 1875, Hon. Hugh J. Jewett was duly appointed Receiver in this action, of all and singular the premises mortgaged to the plaintiff, trustee, as aforesaid; that he was also duly appointed Receiver of

the mortgaged premises, in the auxiliary actions in the States of New Jersey and Pennsylvania hereinafter referred to, at or about the date of the commencement thereof, respectively, and that he has since continued to be and still is such Receiver in each of such actions.

That all claims and judgments in favor of the said defendants, James H. Bertholf, Elizabeth J. Blair, as administratrix of Nathaniel B. Blair, deceased; James Dwyer, Abram Dyer, The Farmers' and Mechanics' National Bank of Buffalo, William H. Gurney, Archibald H. Gates, Russell H. Heywood, John Siemon, Alexander Muir, as administrator of Annie Roe, deceased; Orrin O. Olmstead, Lydia Page, Eliza M. Page, as administratrix of Howard M. Page, deceased; George W. Randall, Nicholas Rassell, Aaron Smith, Solomon Scheu, George Talbot, Austin Thomas, Patrick Whalen, Charles Zaggel and William Zaggel, if any, they or either of them have, are inferior in lien to that of the said mortgage to the plaintiff, of February 4, 1874, and that all indebtedness by the said mortgage should first be paid, before any of the proceeds of the sale of the said mortgaged property can be applied to the payment of the said claims or judgments, or either of them;

That the property of the said Erie Railway Company, as hereinbefore stated, is held and bound for the payment of the indebtedness secured by the said several mortgages thereon, in the following order, that is to say:

First.—For the payment of the debt secured by the said first mortgage, payable May 1, 1892, to the extent of so much of the said property as is embraced and described therein;

Second.—For the payment of the debt secured by the said second mortgage, payable September 1, 1879, to the extent of so much of the said property as is embraced and described therein;

Third.—For the payment of the debt secured by the said third mortgage, payable March 1, 1883, to the extent of so much of the said property as is embraced and described therein;

Fourth.—For the payment of the debt secured by the said fourth mortgage, payable October 1, 1880, to the extent of so much of the said property as is embraced and described therein;

Fifth.—For the payment of the debt secured by the said fifth mortgage, payable June 1, 1888, to the extent of so much of the said property as is embraced and described therein;

Sixth.—For the payment of the debt secured by the said mortgage to the plaintiff, dated September 1, 1870;

Seventh.—For the payment of the debt secured by the said mortgage to the plaintiff of February 4, 1874, to foreclose which this action is brought;

That the several leasehold estates and interests mortgaged to the plaintiff, in and by the mortgage last aforesaid, a general description whereof is contained in the bill of complaint in this action, and a more particular description whereof is contained in the inventory made by the Receiver herein, under the order of this Court, and now on file, were, at the date of said mortgage, and now are subject to certain encumbrances existing thereon at the date of said mortgage, and also to certain rentals payable by the lessee the said Erie Railway Company, in the manner and form provided in and by the respective leases under and in pursuance of which such estates and interests were respectively acquired; that some of these leasehold estates and interest, constitute a valuable part of the mortgaged premises, and that others are burthensome, unprofitable and worthless;

That an action is now pending in the Court of Chancery of the State of New Jersey, in which the plaintiff, trustee in this action, is plaintiff, and the defendant the Erie Railway Company is defendant for a foreclosure of the said mortgage to the plaintiffs of February 4, 1874, in respect of that part of the property and franchises embraced in the said mortgage situate in the State of New Jersey:

That the said action is brought, and is being prosecuted, as auxiliary to this action and in aid thereof;

That there is now pending in the Court of Common Pleas for the county of Pike, in the State of Pennsylvania, an action in which the plaintiff in this action, trustee; is plaintiff, and the defendant the Erie Railway Company is defendant, for the foreclosure of the said last mentioned mortgage to the plaintiff trustee in respect of that part of the property and franchises embraced therein situate in the said

State of Pennsylvania, which action is also brought as auxiliary to this action, and is being prosecuted in aid thereof.

That by an Act of the Legislature of the State of New Jersey, approved April 11, 1876, to which reference is hereby had, it is among other things provided, that in case suit shall be brought for the foreclosure of any mortgage of the franchises and railroads existing under the laws of another State, in the State of the original creation and domicile of such corporation, and also of the same mortgage in the Court of Chancery in the State of New Jersey, said suit in said Court of Chancery shall, so far as is consistent with the protection of parties having acquired liens in the said State, be regarded and conducted as auxiliary to the said suit brought in said State where such corporation was originally created and domiciled;

That by an Act of the Legislature of the State of Pennsylvania, approved May 1, 1876, it is provided, "that where a mortgage executed by a railroad company incorporated under the laws of another State, grants and conveys a railroad situated partly within this and partly within another or other States, and where the mortgage of the railroad within this State has been authorized or confirmed by the laws of this State, any corporation formed under the laws of the State within which the corporation which last owned the said railroad was incorporated, that shall under the said laws succeed to, or become invested with, the title acquired by the purchasers or mortgagees of the said railroad and the franchises appurtenant thereto under any sale or foreclosure thereof under the said mortgage adjudged, ordered, or decreed by a court of competent jurisdiction of the said last-mentioned State, shall succeed to, or become invested with the ownership of the said railroad within this State and the franchises appurtenant thereto, and with all other the estate real and personal, rights, privileges, and franchises in this State, the title to which of the said purchasers or mortgagees has become vested in the said corporation, and said corporation shall hold and enjoy the same free and discharged from every encumbrance or charge thereon subsequent in lien to that of the mortgage or mortgages under which the said sale or foreclosure was had, except where otherwise provided in the said order or decree, as fully and completely as the same were possessed by the company as whose property they were sold, and with every power relating to the use, management, disposition, sale, or mortgage thereof, which was held and enjoyed by the said company; but subject, nevertheless, to all the provisions of the laws of this commonwealth under which the same were held or possessed by the last-named company, and without any greater or other estate, right, title, or privilege therein; provided, however, that the said order or decree of sale or foreclosure shall as to the said railroad within this State, franchises appurtenant thereto, and other the estate, real and personal, rights, privileges and franchises within this State, included within the said sale or foreclosure, have been adopted or enforced by an order or decree confirmatory thereof, or ancillary thereto, made by a State or Federal Court of competent jurisdiction within this State;" to which said act reference is also had;

That the defendant, the Erie Railway Company, has heretofore, and before and since the execution of the said mortgage to the plaintiff, on the 4th day of February, 1874, entered into numerous executory contracts with sundry persons and corporations, respectively, relating to its business as a common carrier of freight and passengers, and the carriage and transportation of freight and passengers over and upon its line of railroad, and the acquisition of proper facilities therefor, and for purposes generally incidental to the lawful use and employment of the franchises and property of the said corporation;

That the Receiver in this action has, from time to time, under and in pursuance of the orders of this Court, entered into contracts executory in their character, which it was contemplated would remain executory for different and considerable periods of time after the termination of the Receivership, all of which were considered to be and are valuable and beneficial to the mortgaged property and premises, and to the purchaser or purchasers thereof at the foreclosure sale;

That the Receiver in the course of his Receivership has lawfully acquired and become possessed of a large amount of stocks in other corporations, bonds, and other obligations for the payment of money,

large part of which has been lawfully and properly pledged by him to secure the payment of money borrowed by him, which he was authorized to borrow for the general purposes of his Receivership, and which will probably remain to a greater or less extent so pledged at the time of the sale of the mortgaged premises;

That all or nearly all of such stocks, bonds, obligations and securities are embraced and described in the inventory of the mortgaged premises and property made and filed in this case by the Receiver in pursuance of the order of this Court;

That the said stocks, bonds, securities and obligations are held by the Receiver as part and parcel of the property and premises mortgaged to the plaintiff as aforesaid under the said mortgage of February 4, 1874, and as the product of the rents, profits and issues of the mortgaged premises during the said Receivership; subject, however, to the liens existing thereon by reason of such pledge or pledges thereof, as hereinbefore stated;

That the Receiver is lawfully possessed of other *choses in action* such as book accounts, bills receivable, and other evidences of indebtedness, the product of the rents, income and profits of the mortgaged premises since the appointment of the Receiver thereof, and therefore embraced in and covered by the last-mentioned mortgage to the plaintiff, and that to a greater or less extent he will probably be at the date of the sale of the mortgaged premises possessed of such *choses in action*, book accounts, bills receivable, and other evidences of indebtedness;

That the defendant, the Erie Railway Company, is possessed of numerous books of accounts of great variety in point of character, records, and so forth, all of which are properly appurtenant to the mortgaged premises as muniments and evidence of title and otherwise, and without which, as part thereof, the mortgaged premises cannot be properly and as advantageously used or employed by the purchaser or purchasers thereof, or by any corporation which may be created by such purchaser or purchasers for the purpose of taking title to the mortgaged property and franchises and employing the same;

That in contemplation of the probability that the mortgaged premises, at the foreclosure sale thereof, owing to the peculiar nature and character of the same, and the prior encumbrances existing thereon, may not sell for a sum representing or approximating to the real value of the plaintiff's interest in the equity of redemption therein, beneficiaries of the plaintiffs, trustees, namely, the holders of bonds issued under the said mortgage to the plaintiff, of February 4, 1874, have united in the appointment of agents and attorneys in fact, and have entered into an agreement among themselves and with such agents and attorneys in fact, the object of which is to protect and preserve the interests of such bondholders in the mortgaged premises by a purchase thereof at such foreclosure sale thereof, by and through such agents and attorneys in fact, if such purchase shall appear to such agents and attorneys in fact to be judicious and practicable, in pursuance of such agreement and in anticipation of the readjustment of their respective interests in the mortgaged premises, in accordance with the provision of chapter 480 of the Laws of 1874, entitled "An Act to facilitate the reorganization of railroads sold under mortgage," and the amendments thereto; which agreement, among other things, contemplates the formation by such purchasers of a new company under the laws of this State, to take title and succeed to all the property and franchises so purchased, subject to the provisions of the said agreement and to all prior liens;

That the mortgaged premises are of such a nature, and so situated, that they cannot be sold in parcels to advantage, or without material injury to the value thereof, as well as detrimental to the public interest, and that the same should be sold as an entirety, except as hereinafter specified;

That in view of the situation and character of the mortgaged premises, it is proper that the defendant The Erie Railway Company should be authorized and required to assign to the Receiver in this action, for the benefit of the purchaser or purchasers, at the foreclosure sale of the mortgaged premises, his or their assigns, all and singular the executory contracts hereinbefore referred to, and that the Receiver should be authorized and required to assign to such purchaser or purchasers, his or their assigns, all and singular

the executory contracts hereinbefore referred to, made by him in the course of his receivership, and which may remain executory at the termination thereof;

That the said Erie Railway Company should be authorized and required to assign and transfer to the said Receiver all and singular the books, records, and documents properly appurtenant to the mortgaged premises, and in their nature constituting muniments or evidence of title thereto, since the same are necessary to the proper and most convenient and profitable enjoyment of the premises, and that the Receiver should be authorized and required to assign, transfer, and deliver to such purchaser or purchasers, his or their assigns, all such books, records, and documents;

That the Referee appointed to sell the mortgaged premises should be authorized, at the request of the plaintiffs' attorneys, to expose for sale, and sell, as part of the mortgaged premises, all and singular the said stocks, bonds, obligations, accounts, and evidences of indebtedness, and other *choses in action* of which the Receiver may have become lawfully possessed in any way or manner during his receivership, subject, however, to any lawful lien or liens existing thereon, whether created by the Receiver or otherwise;

That the mortgaged property and franchises being partly situated in the said States of New Jersey and Pennsylvania, as hereinbefore set forth, the said defendant, the Erie Railway Co., should be authorized and required, by way of further assurance of title, to execute and deliver to the purchaser or purchasers of the mortgaged premises, at the foreclosure sale thereof, or to any corporation organized by such purchaser or purchasers, according to law, for the purpose of taking title to the property and franchises so purchased, after the said sale shall have been confirmed, and contemporaneously with the delivery of the deed of the referee appointed to sell, or as soon thereafter as may be, a conveyance and assignment, to be approved by the Referee or by this court, if any question should arise as to the form or sufficiency thereof, of all and singular the mortgaged premises of every kind, nature, and description, so sold, and wherever the same may be situated:

Now, upon reading and filing said answers, notices of appearance, affidavits, and the notice of this application for the relief demanded in the said amended and supplemental complaint, with admission of due service of such notice endorsed thereon, or proof of due service annexed thereto, upon all the defendants who have appeared, except the defendants James Dwyer, Abram Dyer, The Farmers' and Mechanics' National Bank of Buffalo, William H. Gurney, Russell H. Heywood, John Siemon, Orrin O. Olmstead, Lydia Page, Eliza M. Page, as administratrix of Howard M. Page, deceased, Geo. W. Randall, Aaron Smith, Austin Thomas, Patrick Whalen, and James H. Bertholf, who have waived service of all notices and papers, and upon reading and filing the consent hereunder written, signed by Shipman, Barlow, Larocque & MacFarland, attorneys for the defendant, The Erie Railway Company, and on motion of Herbert B. Turner, Esquire, of counsel for the plaintiff, no one appearing in opposition:

IT IS ORDERED, ADJUDGED, AND DECREED, and this Court, by virtue of the power and authority therein vested, doth order, adjudge, and decree, that all and singular the mortgaged premises, franchises, and property, both real, personal, and mixed, mentioned in the complaint in this action, and hereinafter mentioned, being the same mortgaged, or intended so to be, to the plaintiff, the Farmers' Loan and Trust Company, by the said mortgage bearing date the 4th day of February, 1874, including all and singular that part of the mortgaged premises, franchises, and property, both real, personal, and mixed, situated in the respective States of New Jersey and Pennsylvania, subject to the prior liens herein found and stated, and hereinafter declared, be sold at public auction by and under the direction of George Ticknor Curtis, Esq., counsellor-at-law, of the City of New York, who is hereby appointed a Referee for that purpose, unless previous to said sale the said defendant, the Erie Railway Company, pay to the plaintiff, the said Farmers' Loan and Trust Company, or its attorneys, or to said Referee for the said plaintiff, the amounts herein found as actually due and payable for principal and interest upon the bonds issued under and secured by the said mortgage to the plaintiff, dated February 4th, 1874, with interest thereon from the date hereof, and the costs, fees, and allow-

ances in this action to be adjusted, and the costs of proceedings for a sale up to the time of such payment.

It is further ordered, adjudged and decreed that said mortgaged premises, property and franchises, including those parts thereof situate in the States of New Jersey and Pennsylvania respectively, and also including the aforesaid *choses in action*, stocks, bonds, securities and obligations, bills payable, book accounts, and other evidences of indebtedness, received, acquired, and possessed by the Receiver, part and parcel of the mortgaged premises, and the product of the rents, issues and profits thereof, be sold in one parcel, subject to all liens and encumbrances thereon at the time of sale, prior to the mortgage of the defendant the Erie Railway Company to the plaintiffs, of February 4, 1874, as hereinbefore found and stated, provided, however, that the said *choses in action*, stock, bonds, securities and obligations, or any part thereof, may and shall be sold separately, if the plaintiffs' attorneys before the day of sale shall give notice to the referee that the plaintiff desires to have such stocks, bonds, securities and obligations, or any part thereof, so sold, and the Referee shall be of opinion that the same may be sold to advantage, and without prejudice to the interests of any of the parties to this action. The said mortgaged premises, with the exception of said *choses in action*, stocks, bonds, securities and other obligations, are, in the opinion of the Court, incapable of being sold separately to advantage, and with due regard to the rights and interests of the several parties interested therein.

It is further ordered, adjudged and decreed that the plaintiff shall be at liberty to abandon and disclaim, at any time before the sale, any leasehold estates or interests embraced and included in the mortgage not deemed to be valuable, by giving notice of such abandonment and disclaimer to the Referee in writing, and the Referee shall not expose the leasehold estates and interests so abandoned and disclaimed for sale as part of the mortgaged premises. All leasehold estates and interests sold by the Referee as part of the mortgaged property and premises shall be sold subject to the terms and provisions of the leases and contracts, under which the same are respectively held, and to all encumbrances existing thereon at the date of sale. The Referee shall ascertain the nature and extent of such encumbrances, and be prepared to give all proper information concerning the same at the time of the sale. Such sale shall be made in the county of New York, where a part of the mortgaged premises is situated.

It is further ordered, adjudged and decreed that the said Referee give public notice of the time and place of such sale according to law and the rules and practice of this Court.

It is further ordered, adjudged and decreed that the said Referee take and have present at such sale, for inspection, the inventory of the mortgaged premises heretofore made by the Receiver in pursuance of the order of this Court and filed in this action, and also the more detailed inventory thereof which the Receiver has caused to be made in pursuance of such order, and has been permitted by the Court to retain in his possession for his use and information during the receivership, and that upon the confirmation of the sale by this Court, and at the time of the delivery of the deed of the premises, the said Referee deliver to the purchaser or purchasers of the premises herein directed to be sold the said last-mentioned inventory, and return the former to the files of this Court. If any property embraced within the said inventories, or either of them, shall have, since the making thereof, been consumed, or disposed of by the Receiver, prior to the date of such sale, the Referee shall give such information in regard to such property at the time of sale as may be practicable.

It is further ordered, adjudged and decreed that any and all property of every kind and description acquired by the Receiver during his receivership, with the proceeds of the rents, profits and issues of the mortgaged premises since the making of the said last-mentioned inventories, and not embraced therein, be also sold by the Referee as a part of the mortgaged property and premises, and that he give at the time of sale the best information of and concerning such property as aforesaid not embraced within the said inventories of the Receiver as he may find it practicable to give.

And that the said Referee, before and at the said sale, do and perform all things that may be needful and proper, and take all such measures as may upon careful consideration seem to be judicious

and necessary to expose the property and franchises directed herein to be sold for sale in such manner as to command the most favorable bid or bids, and the highest or best price.

The said Referee is further directed, having due regard to law and the rules and practice of this Court, so to regulate and conduct the sale herein directed to be made as that the plaintiff may be able to avail to the best advantage of the remedies afforded by the said auxiliary actions pending in the said respective States of New Jersey and Pennsylvania.

It is further ordered, adjudged and decreed that the said Referee may and shall, on the request of the plaintiff's attorneys, but not otherwise, adjourn such sale or sales from time at and to such place or places within said county as he, the said Referee, may deem necessary and proper.

It is further ordered, adjudged and decreed that any or either of the parties to this action, or beneficiaries, whom either of such parties may represent as trustee or trustees, may become a purchaser or purchasers upon such sale; and that the property and franchises herein directed to be sold, shall be sold for cash; and in respect to other matters and details herein specified, on such terms not inconsistent with the provisions of this judgment and decree, and subject to the confirmation of this Court, as the plaintiff The Farmers' Loan and Trust Company, through its attorneys, may approve.

And it is further ordered, adjudged and decreed that the mortgaged premises herein directed to be sold shall be sold by the Referee subject to all contracts theretofore lawfully made by the Receiver in pursuance of the authority of this Court which at the date of such sale are executory, all of which are hereby declared to be liens upon the mortgaged property and premises and every part thereof, and the purchaser or purchasers will be required to take title thereto subject to such contracts and obligations, and will be required to assume the same in discharge of the Receiver.

The Receiver is directed to submit for the inspection of the Referee, before the day of sale, all such executory contracts, and the Referee shall at the time of sale give all needful and proper information concerning the same.

And it is further ordered, adjudged and decreed, that James C. Spencer, Esq., the Referee in this action heretofore appointed, do take and state an account of the lawful indebtedness of the Receiver as nearly accurate as may be, bringing the same down to the day appointed by the Referee for the sale of the mortgaged premises, or as near thereto as practicable, and that unless in the meantime the said indebtedness shall have been paid and discharged by the Receiver, in the due execution of the authority conferred upon him by this Court, the mortgaged premises and every part thereof shall be sold by the said Referee, subject to the amount of such indebtedness then existing, the amount whereof shall be stated and declared by the Referee at the time of sale; and the said indebtedness is hereby declared to be a lien upon all and singular the mortgaged premises of every kind and description prior in point of lien and obligation to either of the aforesaid mortgages executed and delivered by the defendant, the Erie Railway Company, to the plaintiff as trustee. And if the mortgaged premises shall be sold subject to any indebtedness of the Receiver, as herein provided, the purchaser or purchasers thereof or their assigns, must, before being let into possession of the premises, execute and deliver to the Receiver an undertaking to his satisfaction, to indemnify and save him harmless from and against any and all such indebtedness, and also against any and all claims or actions which may be brought against him as receiver or otherwise, in respect of any act or thing done or omitted to be done by him, his agents or employés, during the existence of his receivership, and from and against any and all costs and expenses incident to or growing out of such claims or actions.

It is further ordered, adjudged and decreed, that the referee may receive as cash from such purchaser or purchasers, his or their representatives or assigns, bonds and interest coupons of the said bonds secured by the said mortgage to the plaintiff, of February 4, 1874, under and pursuant to which the said sale is had, at such rate per centum of the par value of the said bonds and coupons as will be payable to the holders of such bonds and coupons upon the distribution of the proceeds of sale.

It is further ordered, adjudged and decreed, that the said referee forthwith after such sale make a

report thereof to this Court, and after his report of sale has been duly confirmed, then that he execute a deed or deeds of said premises and property to the purchaser or purchasers at such sale, his or their assigns, on their complying with the conditions on which such deed or deeds were to be delivered, and that such sale and conveyance or conveyances be valid and effectual forever; and that upon the confirmation of such sale, and upon the execution and delivery of such deed or deeds, and upon due compliance with all the conditions of sale precedent, or as soon thereafter as he or they may request, the said purchaser or purchasers, his or their successors or assigns, be let into possession of the premises.

It is further ordered, adjudged and decreed, that the defendant, the Erie Railway Company, be authorized and directed to assign to the receiver on his request, and with all convenient speed, all contracts remaining executory entered into by the said defendant company at any time previous to the 4th day of February, 1874, or since that date with any person, persons or corporations relating to its business as a carrier of freight and passengers, and the carrying and transportation of freight and passengers over and upon its line of railroad, and the acquisition of proper facilities therefor, and for the purposes generally incidental to the lawful use and employment of the francises and property of the said corporation—all such contracts being regarded by this Court as appurtenant to the mortgaged premises, and embraced within the provisions of the mortgage. The Receiver will not be liable otherwise than as Receiver in respect to the said contracts or any of them, and upon the request of the purchaser or purchasers of the mortgaged premises, their representatives or assigns, he shall assign all or any of such contracts to such purchaser or purchasers, their representatives or assigns. Such purchaser or purchasers shall not be required to assume any contracts of the defendant company entered into before the appointment of the Receiver, and all such contracts not so assumed by such purchaser or purchasers, shall be reassigned by the Receiver to the said defendant company.

It is further ordered, adjudged, and decreed, that the defendant, the said Erie Railway Company, be authorized and required, upon the request of the Receiver, and with all convenient speed, to transfer and assign to the Receiver, all books of account, records, and documents, constituting evidence or muniments of title to the mortgaged premises, or any part thereof, and necessary and useful to the proper use and enjoyment of the mortgaged premises by the purchaser or purchasers thereof, their representatives or assigns, and upon such sale and a confirmation thereof, and at the time of the delivery of the deed to such purchaser or purchasers, their representatives or assigns, the said Receiver do assign, transfer and deliver all said books of account, records and documents, to such purchaser or purchasers, their representatives or assigns, the same being regarded by the Court as appurtenant to the mortgaged premises.

If any question shall arise concerning the execution of the last preceding provision of this decree, let the parties apply to this Court for further directions.

It is further ordered, adjudged and decreed, that the said Erie Railway Company be, and the said company is hereby anthorized and directed to execute and deliver, under the direction of the Referee, a conveyance by way of confirmation and further assurance of title, to the said purchaser or purchasers, their representatives or assigns, of all and singular the mortgaged premises of every kind and description, and wherever situated, herein directed to be sold by the referee, the form of the deed and the mode of execution to be settled and approved by the Referee, and that such deed and conveyance be delivered to such purchaser or purchasers, their representatives and assigns, contemporaneously with the deed or deeds of the Referee.

It is further ordered, adjudged, and decreed, that in case the purchaser or purchasers of the said mortgaged premises, should purchase and acquire title to the same pursuant to any plan or agreement of the kind contemplated and provided for by an act, entitled "An Act to facilitate the reorganization of railroads sold under mortgage, and providing for the formation of new companies in such cases," passed May 11th, 1874, and contained in chapter 430 of the Laws of 1874, and the amendments to that act, such purchaser or purchasers will take title to the mortgage franchises and property so sold and

purchased as herein provided, subject to all the lawful provisions and requirements of said plan and agreement, and they, their assigns and successors, and any corporation that may be organized for the purpose of taking title to such franchises and property, shall possess all the powers, rights and privileges, and be subject to all the liabilities and obligations of the said statutes, and of the said plan and agreement.

And it is further ordered, adjudged and decreed that the defendants in this action, and each and every of them, and all persons claiming, or who may claim from or under them, or any or either of them, and all persons having a lien subsequent to the said mortgage of the 4th of February, 1874, to the plaintiff The Farmers' Loan and Trust Company, trustee, by judgment or decree upon the property and franchises conveyed by said mortgage, and his or their heirs and personal representatives, and all persons having any lien or claim by or under such subsequent judgment or decree, and their heirs and personal representatives, and all persons claiming under them, be, and they are hereby forever barred and foreclosed of and from all equity of redemption, title, interest and claim of, in and to the said mortgaged franchises, premises and property herein described and ordered to be sold, and every part and parcel thereof; and that the purchaser or purchasers of the said property so to be sold, or their assigns, be let into the possession, use and enjoyment thereof; and that any of the parties to this action, who may be in the possession of said premises and property, or any part thereof, and any person who since the time of filing the several notices of *lis pendens* in this action as aforesaid, has come into the possession thereof, or of any part thereof, under the said defendants, or any or either of them, and every receiver or other officer of this Court who may may be in the possession or have the control of the same, or any part thereof, under or by virtue of any order of this Court, heretofore made or hereafter to be made in this action, deliver possession thereof to such purchaser or purchasers, on the production of said Referee's deed, or other proper evidence of the sale and purchase of the said franchises, premises and property.

It is further ordered, adjudged and decreed that such purchaser or purchasers, their representatives and assigns, shall be fully vested with, and shall hold, have, possess and enjoy the said franchises, property and premises sold in pursuance of this judgment, and all the rights and privileges pertaining thereto, as fully and completely as the said Erie Railway Company was at the date of said mortgage, that is to say, the 4th day of February, 1874, or has at any time since been possessed of, or has held possession of, or enjoyed the same, subject to the prior liens aforesaid.

It is further ordered, adjudged and decreed that said Referee hereby appointed do pay and distribute the proceeds of sale hereinbefore directed to be made (after retaining his own fees and expenses in executing this judgment, to be settled and allowed by this Court) to the following persons (taking their receipts respectively therefor), and in the following order, priority and proportion, that is to say:

I.—To the plaintiffs their costs and expenses (to be hereafter adjusted), and such other sums of money for costs and expenses or any other purpose as the Court may in the meantime direct to be paid.

II.—All lawful taxes and assessments upon the mortgaged premises or any part thereof, if any, remaining unpaid at the time of sale to the person, persons or corporations entitled to receive the same.

III.—The remainder of the proceeds of such sale, or so much thereof as may be necessary to satisfy and discharge the amount herein found to be due to the plaintiff, trustee, together with interest thereon to the date of sale, the said Referee shall pay to the plaintiff, trustee, to the end that the plaintiff in the execution of its trust may distribute such proceeds to and among the respective holders of bonds and coupons belonging to bonds issued under the said mortgage to the said plaintiff of February 4, 1874. If the said bonds and coupons are paid in full, or to the extent that they are paid in full, the holders thereof at the time of receiving such payment shall surrender the said bonds and coupons to the plaintiff, and the same shall be cancelled. In the case of part payment of bonds or coupons, the holders shall allow and permit such part payment to be endorsed or stamped upon such bonds or coupons. The same course, as near as

may be, shall be pursued by the Referee on the receipt of bonds or coupons or a percentage thereof towards the payment of the purchase money, as hereinbefore authorized.

IV.—If any surplus moneys remain of the aforesaid proceeds of sale after payment in full of the several amounts hereinbefore directed and allowed to be paid, or that may hereafter be directed and allowed to be paid by the further order of this Court, out of such proceeds of sale, then the said Referee shall bring such surplus into Court, with his report of sale, to abide the further order of the Court touching the same, and the said Referee shall take and bring into Court with his report proper receipts and vouchers for all his payments and expenses.

It is further ordered, adjudged and decreed, that the said Referee shall keep all moneys received for said property on deposit in the said Farmers' Loan and Trust Company, in the City of New York, subject to his own order as such Referee, and to be drawn by him only for the purposes of this decree, and that he shall make a report to this Court of all he shall do under and by virtue of this judgment and decree.

It is further ordered, adjudged and decreed, that any of the parties to this action, and also the said Referee, and the said Receiver, may hereafter apply to the Court for such further order or directions therein as may be just and proper, at the foot of this judgment and decree, and all other questions arising in this action are reserved.

The description of the real estate and property authorized to be sold under and by virtue of this judgment and decree, so far as the same can be ascertained from the said mortgage to the plaintiff, the Farmers' Loan and Trust Company, bearing date the fourth day of February, 1874, or from the complaint in this action, is as follows:

"All and singular the railway of the party of the first part, from and including Piermont, on the Hudson River, to and including the final terminus of the said railway on Lake Erie, and the railway known as the Newburgh Branch, from Newburgh to the main line, and also all that part of the railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York, and also all other railways belonging to the party of the first part, in the States of New York, Pennsylvania, and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges, and rights of the said Company; and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufacturd materials, coal, wood, and supplies of every kind belonging or appertaining to the party of the first part, and all the tolls, income, issues, and profits arising out of the said property, and all rights to receive or recover the same; also all the estate, right, title and interest, terms and remainder of terms, franchises, privileges, and rights of action of whatsoever name or nature in law or in equity conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, by the Union Railroad Company, by the Buffalo, New York and Erie Railroad Company, by the Buffalo, Bradford, and Pittsburgh Railroad Company, by the Rochester and Genesee Valley Railroad Company, and by the Long Dock Company, and this description is to be understood as embracing and including all and singular the *choses in action*, stocks, bonds, book accounts, bills receivable, and other evidences of indebtedness, leasehold estates, contracts, and other property hereinbefore mentioned."

CHS. DONOHUE, *J. S. C.*

We consent to the entry of this judgment.

SHIPMAN, BARLOW, LAROCQUE, & MACFARLAND,
Attorneys for the Defendant,
The Erie Railway Company.

Dated New York, Nov. 7, 1877.

No. 10.

SUPREME COURT OF THE STATE OF NEW YORK.

THE FARMERS' LOAN AND TRUST CO., *Plaintiff*, *agst.* THE ERIE R'Y CO., *et al.*, *Defendants.*	*Referee's Report of Sale.*

To the Honorable the Supreme Court:

Pursuant to the judgment and decree of foreclosure and sale, made and entered in this cause at a Special Term held in the City and County of New York on the 7th day of November, 1877, by the Honorable CHARLES DONOHUE, *Justice*,

I, GEORGE TICKNOR CURTIS, the Referee therein appointed to sell the franchises and property of the Erie Railway Company in the said judgment and decree mentioned and referred to, respectfully report:

First.—That prior to the day of sale I caused the following notice of the time and place of sale to be published, as was required by the judgment aforesaid, and according to law, such publication being of the notice hereinafter set forth.

Second.—That at the time and place of sale mentioned in the following notice, to wit, on the 24th day of April, 1878, at 12 o'clock, noon, at the Merchants' Exchange Sales Room, Number 111 Broadway, in the City of New York, I attended, having with me the several inventories in the aforesaid judgment and decree mentioned and referred to, to wit, the inventory heretofore made by the Receiver in pursuance of the order of the Court and filed in this action, and also the more detailed inventory made by the Receiver and retained in his possession, together with lists and statements of property hereto annexed; and at the same time and place attended William Paterson, Esq., Master in Chancery of the Court of Chancery of the State of New Jersey.

Third.—That thereupon the following notice of sale, issued and signed by me, was duly and publicly read by Bernard Smythe, the auctioneer appointed to make the sale, in the words and figures following:

ERIE RAILWAY.—FORECLOSURE SALE.—*Supreme Court of the State of New York.*—The Farmers' Loan & Trust Company, Plaintiff, against The Erie Railway Company and others, Defendants.

By virtue of and pursuant to a judgment and decree of foreclosure and sale rendered and entered at a Special Term of the said Supreme Court in the above entitled action on the seventh day of November, A. D. 1877, I, George Ticknor Curtis, Referee, appointed therein to sell all and singular the mortgaged premises, franchises and property, both real, personal, and mixed, mentioned in the complaint in this action and mentioned in the said judgment and decree, being the same mortgaged or intended so to be to the plaintiff, the Farmers' Loan & Trust Company, by a mortgage bearing date on the fourth day of February, A. D. 1874, do hereby give notice that on the twenty-fifth day of March, in the year 1878, at 12 o'clock noon, at the Merchants' Exchange Sales Room, No. 111 Broadway, in the City of New York, by Bernard Smythe, auctioneer, I shall proceed to sell and shall sell at public auction to the highest bidder, for cash, the following described property: All and singular the railways of the said company from and including Piermont on the Hudson River to and including the final terminus of the said railway on Lake Erie, and the railway known as the Newburgh Branch, from Newburgh to the main line; and also all that part of the railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York; and also all other railways belonging to the company in the

States of New York, Pennsylvania and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the said company, and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood, and supplies of every kind belonging or appertaining to the said company; and all tools, income, issues, and profits arising out of said property, and all rights to receive or recover the same; also, all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York & Erie Railroad Company or unto the Erie Railway Company, by the Union Railroad Company, by the Buffalo, New York & Erie Railroad Company, by the Buffalo, Bradford & Pittsburg Railroad Company, by the Rochester & Genesee Valley Railroad Company, and by the Long Dock Company; also, all and singular the choses in action, stocks, bonds, book accounts, bills receivable, and other evidences of indebtedness, leasehold estates, contracts and other property in the said judgment mentioned.

Given under my hand at the City of New York, this twenty-first day of January, A. D. 1878.

GEORGE TICKNOR CURTIS, *Referee.*

TURNER, LEE & MCCLURE, *Plaintiff's Attorneys*, 20 Nassau Street, New York.

The sale of the above described property heretofore advertised to take place on the twenty-first day of January, 1878, at 12 o'clock noon, at the Merchants' Exchange Sales Room, No. 111 Broadway, in the City of New York, was then and there adjourned to the twenty-fifth day of March, 1878, at the same hour and place. GEORGE TICKNOR CURTIS, *Referee.*

The sale of the above described property is hereby adjourned to the twenty-fourth day of April, 1878, at the same hour and place. GEORGE TICKNOR CURTIS, *Referee.*

TURNER, LEE & MCCLURE, *Plaintiff's Attorneys*, 20 Nassau Street, New York.

And that thereupon the auctioneer duly and publicly read the terms of sale issued and signed by me, a copy whereof is hereto annexed.

After which the said auctioneer duly and publicly read the terms of sale issued and signed by the said William Paterson, Esq., as follows:

ERIE RAILWAY.—FORECLOSURE SALE.—*In Chancery of New Jersey.*—Between the Farmers' Loan and Trust Company, Trustees, Complainants, and the Erie Railway Company and others, Defendants. *Fi. fa.*, for sale of mortgaged premises.

In pursuance and by virtue of the above stated writ of *fieri facias* issued out of the Court of Chancery of the State of New Jersey, on the seventh day of this month of December, A. D. eighteen hundred and seventy-seven, directed to the subscriber, one of the masters of said court, specially designated in said writ by the Chancellor of said Court and State, I shall expose to public sale and vendue on Monday, the twenty-first day of January next, in A. D. 1878, at the Merchants' Exchange Salesroom, No. 111 Broadway, in the City, County and State of New York, at the hour of twelve (12) o'clock, noon, of said day, or as soon thereafter as such sale can be made, being the same time and place appointed for sale by George Ticknor Curtis, the referee designated in a certain judgment or decree obtained by the complainants herein, as plaintiffs, in the Supreme Court of the State of New York, against the said the Erie Railway Company and others, as defendants, and I shall then and there sell under my said writ, all those lands, premises, railroads, property and franchises that are situated, existing or exercisable within the State of New Jersey, and ordered by the final decree in said Court of Chancery to be sold, being the same described in a mortgage executed by the said the Erie Railway Company, party of the first part, to the complainants herein, dated fourth of February, A. D. 1874, recorded in the several Counties of Hudson, Passaic and Bergen, in the State of New Jersey, and in the office of the Secretary of said State, as follows, namely:

All and singular the railway of the party of the first part, from and including Piermont, on the Hudson River, to and including the final terminus of the said railway on Lake Erie, and the railway known as the Newburgh Branch, from Newburgh to the main line; and also all that part of the railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York; and also all other railways belonging to the party of the first part in the States of New York, Pennsylvania and New Jersey, or any of them, together with all the lands, tracts, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the said company; and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood and supplies of every kind, belonging or appertaining to the party of the first part, and all the tolls, income, issues and profits arising out of the said property, and all right to receive the same; also all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action, of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York & Erie Railroad Company, or unto the Erie Railway Company, by the Union Railroad Company, by the Buffalo, New York & Erie Railroad Company, by the Buffalo, Bradford & Pittsburgh Railroad Company, by the Rochester & Genesee Valley Railroad Company, and by the Long Dock Company; together with all and singular the emoluments, income, advantages, tenements, hereditaments and appurtenances thereunto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

The aforesaid sale, as directed under said writ issued out of said Court of Chancery, will be made as therein directed, and subject expressly to the lien of certain mortgages existing upon the property described as aforesaid—that is to say, to the mortgages called the fifth mortgage and supplemental mortgage of the New York & Erie Railroad Company, and to that of the complainants, known as the first consolidated mortgage of the Erie Railway Company, and also to the prior mortgages known as the first, second, third and fourth mortgages, made by the said the New York & Erie Railroad Company, to the extent of so much of said property as is contained respectively therein, and will take place at the time and on the day designated hereinbefore, or any subsequent day and place to which the Referee shall adjourn said sale under the judgment obtained as aforesaid in the State of New York, so as that said sales shall both be made together and for the one price and bid, and in all things in accordance with the direction of said execution.

Given under my hand, at Newark, this thirteenth day of December, A.D. 1877.

WILLIAM PATERSON, Master in Chancery.

RICHARD WAYNE PARKER, *Solicitor of Complainants*, Newark, N. J.

The above sale stands adjourned to take place on the twenty-fifth day of March, 1878, at the same hour and place. WILLIAM PATERSON, Master in Chancery.

The above sale stands adjourned to take place on the twenty-fourth day of April, 1878, at the same hour and place. WILLIAM PATERSON, Master in Chancery.

And thereupon the said auctioneer duly and publicly read the terms of sale issued and signed by the said William Paterson, a copy of which is hereto annexed.

And thereupon the said auctioneer duly and publicly read the terms of a sale by Hugh J. Jewett, Receiver, in a cause pending in the Court of Chancery of New Jersey, between the Elmira Iron and Steel Rolling Mills Company, complainants, and the Erie Railway Company, defendants, a copy of which is hereto annexed.

Fourth.—That immediately after the reading of the papers above mentioned, a paper, purporting to be a notice to bidders, signed by George Lear, Attorney-General of the State of Pennsylvania, was handed to me by a person unknown, who requested that the same might be read; and thereupon the said paper was duly and publicly read by the said auctioneer, by my direction. A copy of the said paper is hereto annexed.

And, at the same time, a paper, purporting to be a notice by the Chemung Railroad Company, and

signed by its attorney, James P. Lowery, was handed to me by the said attorney, with a request that the same might be read; and thereupon the said paper was publicly read by the said auctioneer, by my direction. A copy of the said last mentioned paper is hereto annexed.

Fifth.—That thereupon due and public announcement was distinctly made by me of the following:

1st. That the inventory of the property of the Erie Railway Company remaining in the hands of the Receiver was then and there present and open to inspection, and that there was also then and there present in my hands and open to inspection, a list of property embraced in the said inventory which the Receiver has disposed of, and of sundry amounts received by him, and of property acquired by him, since the said inventory was made, and of property acquired by the Receiver, and not embraced in the said inventory, which he has disposed of.

2d. That the inventory filed in the County Clerk's Office was also then and there present and open to inspection.

3d. That a list or schedule of the executory contracts of the Erie Railway Company was also then and there present in my hands open to inspection; that out of the said list there were excepted, and not to be embraced in the sale, two contracts, both bearing date on the 6th day of May, 1874, in one of which the Atlantic & Great Western Railroad Company is party of the first part, the Erie Railway Company is party of the second part, and Sir John Swinburne, Henry Wollasten Blake and Sir George Gray Balfour are parties of the third part; and in the other of which the Atlantic & Great Western Railroad Company is party of the first part, and the Erie Railway Company of the second part.

4th. That there was also present, and in my hands, open to inspection, a list or schedule of the records, books and muniments of title, patent rights and licenses belonging to the Erie Ráilway Company, assigned to and in possession of the Receiver, all of which were to be included in the sale, and would pass to the purchaser.

5th. That there was also present and in my hands, open to inspection, a list or schedule of leases of railroads, piers, bulkheads and water fronts, lots in New York City, lots and offices along the line of the road, belonging to the Erie Railway Company, already assigned to the Receiver, and now in his possession, all of which will be included in the sale, and would pass to the purchaser, excepting the following, to wit: a lease bearing date the sixth day of May, 1874, and made by the Atlantic & Great Western Railroad Company, as party of the first part, the Erie Railway Company as party of the second part, and another lease or memorandum of agreement bearing date the 8th day of November, 1871, to which the Erie Railway Company is party of the first part, and Lauren C. Woodruff, lessee of the Erie and Genesee Valley Railroad Company, is party of the second part, both of which said last-mentioned leases, it was distinctly announced by me, would not be included in the sale, or the estates and interests purporting to be created by them.

6th. That there was also present in my hands, and open to inspection, a list of stocks of other companies owned by the estate of the Erie Railway Company, and held by the Receiver, all of which would be included in the sale, and would pass to the purchaser, together with a list of bonds and coupons owned by the estate of the Erie Railway Company, all of which would likewise pass to the purchaser.

7th. That there was also present, and open to inspection, a list or schedule of the executory contracts of the Receiver, which would be included in the sale, and would pass to the purchaser, who would be entitled to the benefit, and would be subject to the obligations thereof.

8th. It was further, and lastly, distinctly announced by me, that the indebtedness of the Receiver existing on the said 24th day of April, 1878, was and is, as nearly as can be ascertained, the sum of two million dollars ($2,000,000); that this sum was to be taken as a maximum amount of said indebtedness, but that it might be subject to some reductions in consequence of proceedings now pending. Copies of the said lists and schedules are hereto annexed.

Sixth.—That after the reading of the papers aforesaid, and after the aforesaid announcements and

statements were made by me, one, Mr. Francis Platt, representing himself to be a stockholder of the Erie Railway Company, made a verbal protest, that the sale ought not to be allowed to proceed, assigning as a reason that the inventory of the property to be sold was too voluminous to admit of examination at that time by bidders, so that they could bid intelligently; that thereupon I directed the auctioneer to proceed with the bids; that the first bid was of five million dollars ($5,000,000), by Edwin D. Morgan; that the next highest bid was made by the said Platt, for the sum of five million five hundred thousand dollars ($5,500,000), and that the third bid was made by the said Edwin D. Morgan, for the sum of six million dollars ($6,000,000); and after due time given for further bids, the property was struck down to the said Edwin D. Morgan for the said sum of six million dollars ($6,000-000), no person having bid a higher sum therefor. And thereupon the said Edwin D. Morgan anannounced to me that he made the said bid on behalf of himself, J. Lowber Welsh, and David A. Wells as trustees; whereupon I gave to the said Edwin D. Morgan, J. Lowber Welsh and David A. Wells, trustees, my memorandum and certificate of their purchase, a copy of which is hereto annexed, and received from them, in duplicate, their acknowledgment and undertaking, one of which duplicate originals subscribed by them is hereto annexed; and at the same time the said Edwin D. Morgan paid to me the sum of seven hundred and twenty thousand dollars ($720,000), being twelve per cent. of the amount of the accepted bid, for which sum my receipt, as Referee, is included in my memorandum aforesaid given to the said purchasers, and immediately thereafter I deposited the said sum of seven hundred and twenty thousand dollars ($720,000) in the said Farmers' Loan & Trust Company, subject to my order as Referee.

Seventh.—And I certify that on the twenty-third day of November, one thousand eight hundred and seventy-seven, I took possession of the eighteen volumes of the inventory of the property of the Erie Railway Company, then in the official possession of the Receiver, and left the same in the vault of the Erie Railway Company at its office, and in the hands of the Secretary of the Company, taking his receipt for the same, subject to my further order, or the order of the Court, stating to the said secretary, at the same time, that the said inventory must be, at all reasonable times, open to the inspection and examination of any person to whom I might give an order in writing for that purpose; and the said secretary engaged that this should be done; no person has applied to me from that time for leave to inspect or examine the said inventory down to the time of the sale.

And I further certify that the lists and schedules annexed to this report have been in my possession at my office in the City of New York for more than six weeks past, open to the inspection of any person seeking information respecting the property to be sold, and that no person prior to the time of sale has applied to me for such information.

All of which is respectfully submitted.

Dated at New York, April 25th, 1878. GEORGE TICKNOR CURTIS, *Referee.*

N. Y. SUPREME COURT.

(Title of Action.) *Terms of Sale.*

The premises described in the foregoing advertisement of sale will be sold to the highest bidder, under the direction of the undersigned Referee, upon the following terms:

First.—Twelve per cent. of the amount of the accepted bid will be required to be paid to the Referee at the time and place of sale, in cash, or in a certified check or checks, satisfactory to the Referee, for which payment the Referee's receipt will then and there be given to the purchaser. The purchaser or purchasers, in case he or they shall elect to pay some part of the purchase-money in bonds, as hereinafter allowed, will be entitled to receive back from the Referee any balance of the said amount of twelve per cent. that may not be required to meet the cash payments which may be needed to be made by the Referee in the full execution of the judgment and decree in this action, provided such purchaser or purchasers shall make payment of such balance in bonds at the ratable value thereof, which is to be ascertained in

the manner hereinafter described. And the purchaser may, at the election of the Referee, be required to pay a further sum in cash, provided the amount of twelve per cent. on the accepted bid shall not be sufficient to pay all just and lawful charges required by the judgment to be paid out of the proceeds of sale.

Second.—The residue of the purchase-money will be required to be paid to the Referee at the office of the Farmers' Loan and Trust Company, Number 26 Exchange Place, in the City of New York, on the first day of June, A. D. 1878, at 12 o'clock noon; at which time and place the deed or deeds required by the judgment in this cause, to be given to the purchaser or purchasers, will be ready for delivery; but the purchaser or purchasers shall have the right to demand and receive the deed or deeds at an earlier date, upon complying with the terms of sale.

Third.—The Referee will receive as cash, from the purchaser or purchasers, his or their representatives or assigns, in payment of the residue of the purchase-money, bonds and interest coupons of bonds secured by the mortgage made by the Erie Railway Company to the Farmers' Loan and Trust Company, Trustee, which was executed February 4th, 1874, under and pursuant to which the sale is to be made, at such rate *per centum* of the par value of the said bonds and coupons as will be payable to the holders of all such bonds and coupons upon the distribution of the proceeds of the sale, after the payment of all just and lawful charges thereon.

Fourth.—If the purchaser or purchasers shall fail to fulfill the foregoing or any conditions of the sale, he will be charged with interest on the whole amount of the purchase from the 1st day of June, unless the Referee shall deem it proper to extend the time for the completion of the purchase.

Fifth.—All lawful taxes and assessments upon the mortgaged premises, or any part thereof, if any, remaining unpaid at the time of sale, will be paid by the Referee out of the purchase-money, to the person, persons or corporations entitled to receive the same.

Sixth.—The purchaser will at the time and place of sale, sign to a memorandum of his purchase, and pay in addition to the aforesaid amount of twelve per cent. on the accepted bid, the auctioneer's fee of five hundred dollars.

Seventh.—The bidding will be kept open after the property is struck down; and in case any purchaser shall fail to comply with any of the conditions of sale, the premises and property so struck down to him will be again put up for sale, under the direction of the said Referee, under the same terms of sale, without application to the court, unless the plaintiff's attorneys shall elect to make such application; and such purchaser will be held liable for any deficiency there may be between the sum for which said premises shall be struck down upon the sale, and that for which they may be purchased upon the resale, and also for any costs or expenses occurring upon such resale.

Eighth.—The property to be sold will be offered and sold in one lot, and will consist of the following:

All and singular the railway of the Erie Railway Company from and including Piermont, on the Hudson River, to and including the final terminus of the said railway on Lake Erie, and the railway known as the Newburgh Branch, from Newburgh to the main line, and also all that part of the railway designated as The Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York, and also all other railways belonging to the Erie Railway Company, in the States of New York, Pennsylvania and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges, and rights of the said company; and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood, and supplies of every kind belonging or appertaining to the said company, and all the tolls, income, issues and profits arising out of the said property, and all rights to receive or recover the same; also all the estate, right, title, interest, terms and remainder of terms, franchises, privileges, and rights of action of whatever name or nature in law or in equity, conveyed or assigned unto the New York & Erie Railroad Company, or unto the Erie Railway

Company, by the Union Railroad Company, by the Buffalo, New York & Erie Railroad Company, by the Buffalo, Bradford & Pittsburgh Railroad Company, by the Rochester & Genesee Valley Railroad Company, and by the Long Dock Company; embracing and including all and singular the *choses in action*, stocks, bonds, book accounts, bills receivable, and other evidences of indebtedness, leasehold estates, contracts, and other property mentioned and described in the lists and schedules to be exhibited at the sale, and contained and described in the Receiver's inventory of the real and personal property of the Erie Railway Company, also to be exhibited at the sale, not consumed or disposed of by the Receiver in the discharge of his duty prior to the sale, and including all property of every kind and description acquired by the Receiver during his receivership, with the proceeds of the rents, profits, and issues of the mortgaged premises since the making of the said inventory and not embraced therein, and excepting therefrom such portions thereof as will be declared excepted at the time and place of sale.

Ninth.—The property will be sold subject to the following encumbrances, to wit:

1st.—To five mortgages executed by the New York & Erie Railroad Company prior to the mortgage executed by the Erie Railway Company to the plaintiff in this action, on the first day of September, 1870, and known as the first consolidated mortgage. The said five mortgages are the following:

(*a*) A mortgage to secure bonds to the amount of $2,483,000 of principal, with interest thereon from the 1st day of November, 1877.

(*b*.) A mortgage to secure bonds to the amount of $2,174,000 of principal, with interest thereon from the 1st day of March, 1878.

(*c*.) A mortgage to secure bonds to the amount of $4,852,000 of principal, with interest thereon from the 1st day of March, 1878.

(*d*.) A mortgage to secure bonds to the amount of $2,937,000 of principal, with interest thereon from the 1st day of October, 1877.

(*e*.) A mortgage to secure bonds to the amount of $709,500 of principal, with interest thereon from the 1st day of December, 1877.

2d.—To the amount of the indebtedness of the Receiver existing at the time of the sale, which amount will be stated and declared by the Referee, as near as may be, at the time of sale. And the purchaser, or purchasers, of the property, his or their assigns, before being let into possession of the mortgaged premises, will be required to execute and deliver to the Receiver an undertaking, to his satisfaction, to indemnify and save him harmless from and against any and all such indebtedness, and also against any and all claims or actions which may be brought against him as Receiver, or otherwise, in respect of any act done by him, his agents or employees, during the existence of his Receivership, and from and against all costs and expenses incident to or growing out of such claims or actions.

3d. To the payment of the debt secured by the said mortgage made by the Erie Railway Company to the plaintiff in this action as Trustee, bearing date September 1st, 1870, payable May 1st 1892, under which there have been issued bonds to the amount of $16,656,000 gold, including bonds called convertible bonds, which bear date September 1, 1865; interest accrued November 1, 1877, and unpaid, is $2,573,245 gold, and interest is also due since that date.

4th. To all executory contracts made by the Receiver in pursuance of the authority of the Court, existing at the time of sale.

Tenth.—All persons proposing to become bidders at the sale of this property are hereby required to take notice of, and to conform to the directions, permissions, and requirements of the judgment and decree of the Supreme Court of the State of New York, hereinbefore mentioned, under and pursuant to which the sale will be made; and any person or persons becoming the purchaser or purchasers will take their right and title pursuant to such judgment and decree, and under the auxiliary judgments and decrees of the Court of Chancery of the State of New Jersey, and of the Court of Common Pleas for the County of Pike, in the State of Pennsylvania.

New York, April 20th, 1878. GEORGE TICKNOR CURTIS, *Referee.*

IN CHANCERY OF NEW JERSEY.

(Title of Action.)

Terms of Sale. On *Fi. Fa.* for sale of mortgaged premises.

The subscriber, a Master in Chancery of the State of New Jersey, specially designated to make sale of the property, railroads and franchises of the Erie Railway Company, described in the decree made in this cause, and in the mortgage therein referred to, and in the writ of execution issued upon said decree from said Court of Chancery, being mortgaged property and franchises of said corporation, situate or exercisable within the State of New Jersey, in obedience to said execution, and to an Act entitled "A Supplement to an Act entitled An Act respecting Railroads and Canals," approved April 11, 1876, will proceed to make the sale by said writ of execution commanded, in the following manner and upon the following terms:

First.—Sale being now proposed to be made of the franchises and property of the Erie Railway Company described in the judgment and decree of the Supreme Court of the State of New York, rendered in a cause therein, wherein the Farmers' Loan and Trust Company are plaintiffs, and the Erie Railway Company and others are defendants, and in the mortgage in said judgment referred to, and under and by virtue of said judgment and decree, I do, as directed by said writ of execution from the Court of Chancery of New Jersey, proceed to expose to public sale and outcry the franchises, railroad and property mentioned and conveyed by said mortgage, and existing or exercisable within the State of New Jersey, and directed to be sold by said decree, and in such manner as that said sales shall both be made together, and for the same price or bid, but it shall be a condition of said sale under said decree of said Court of Chancery by me made, that the purchaser, in addition to the amount bid by him, shall pay and discharge all the sums of money which have by its decree as aforesaid been established as liens upon said mortgaged property and franchises in the State of New Jersey, or any part thereof, and by said decree ordered to be raised, including the costs taxed, and execution fees taxable in the ordinary way—which sums of money are as follows, that is to say:

1. Costs taxed..... $403 78
2. Interest thereon from 27th November, 1877 till paid.....
3. Execution fees and expenses of sale, to be determined by said Court of Chancery.

Second.—In case such conditions be fulfilled, the purchaser at such sale under said judgment and decree of the Supreme Court of the State of New York, shall be declared and taken to have purchased said franchises, railroads and property in New Jersey.

Third.—No deed shall be made by me under the sale now as aforesaid to be had till after conveyance made to such purchaser by George T. Curtis, Esq., Referee, &c., selling under said judgment and decree in the Supreme Court of the City of New York, nor until special order made by the Court of Chancery of New Jersey, confirming my said sale, and directing the delivery of said deed.

Fourth.—The title vested by this sale shall be subject to all lawful mortgages or other liens as directed and specified by the decree of said Court of Chancery of New Jersey, to wit: being the same mentioned in the said judgment and decree of the Supreme Court of the State of New York.

Fifth.—In addition to the sum required to be paid on the day of sale by the aforesaid Referee, by the conditions of sale prescribed under the order directed to him in the State of New York, the purchaser will be required to pay the sum of five thousand ($5,000) dollars upon said day, to be applied to the discharge of said fees and expenses under this order, and credited thereon, when the same have been determined by the Chancellor.

Sixth.—The deed to be made and executed by me by virtue of the aforesaid sale, will be delivered to the purchaser at the office of the complainants, in the city of New York, of the time of which the purchaser will be notified.

Seventh.—This sale subject to adjournment.

Given under my hand this 24th day of April, A. D. 1878.

WILLIAM PATERSON, *Master in Chancery of N. J.*

IN CHANCERY OF NEW JERSEY.

Between THE ELMIRA IRON & STEEL ROLLING MILLS COMPANY, *Complainants*, and THE ERIE RAILWAY COMPANY, *Defendants*.

Terms of Sale.

By virtue of a decretal order made in this cause, bearing date the fourth day of January, one thousand eight hundred and seventy-eight, the subscriber, Hugh J. Jewett, Receiver appointed therein of the property and franchises of the Erie Railway Company, now proceeds, in obedience to said order, to make sale at public auction to the highest bidder, as therein directed, of all the property, real and personal, rights, legal and equitable, and franchises of the Erie Railway Company whereof he is as such Receiver possessed, in the following manner and upon the following terms:

First.—Such sale shall be made in such manner as that the purchase of said property, rights and franchises, shall be made on one and the same bid by such person or persons as shall become purchasers of the property and franchises of the Erie Railway Company under the decree of foreclosure made in Chancery of New Jersey in a certain cause wherein The Farmers' Loan & Trust Company is complainant, and the Erie Railway Company and others are defendants, and under the judgment and decree in the Supreme Court of the State of New York, in a certain cause there depending between the same parties for the foreclosure of the same mortgage.

The purchaser at that sale shall be declared purchaser of said property, rights, and franchises by said Receiver now sold, and upon the same bid and consideration.

Second.—Provided, nevertheless, that the said purchaser, or purchasers, as further consideration of said sale by said Receiver now made, shall perform the following conditions:

1. That he or they pay to the solicitors for the complainants in this suit the costs thereof, to be taxed, including therein any sum which may be fixed by said Court of Chancery as counsel fee for the conduct thereof.

2. The sale made by virtue hereof shall be subject to all contracts heretofore made by such Receiver in pursuance of the authority of said Court of Chancery of New Jersey which at this date are executory—all of which are by said order declared to be liens upon the property, franchises, and premises whereof said Receiver is as such possessed—and the purchaser, or purchasers, shall take title thereto, subject to such contracts and obligations, and assume the same in discharge of such Receiver.

3. Such property and franchises sold shall be subject to the amount of any indebtedness created by such Receiver now existing, and the purchaser, or purchasers, before being let into possession of the premises, shall execute and deliver unto said Receiver an undertaking to the satisfaction of the Court of Chancery to indemnify and save him harmless from and against any and all such indebtedness, and also against any and all claims or actions which may be brought against him as Receiver or otherwise in respect of any act or thing done or omitted to be done by him, his agents or employees, during the existence of such Receivership, or by reason of any claim against the said company, and from and against any and all costs and expenses incident to or growing out of such claims or actions.

4. Before the delivery of any deed the sale by said Receiver made shall be duly reported to the Chancellor of New Jersey, and the same and the deed of conveyance of such franchises and property shall be approved and confirmed by him.

5. The Erie Railway Company shall join with said Receiver, under their seal, in the conveyance to said purchaser or purchasers of said property, real and personal, rights, legal and equitable, and franchises now sold.

6. The purchaser shall be required to sign these conditions.

April 24th, 1878. H. J. JEWETT, *Receiver*.

Notice to Bidders.

Notice is now given on behalf of the Commonwealth of Pennsylvania, that by virtue of several Acts of the General Assembly of that commonwealth, and especially of those approved January 16th, 1841, March 26th, 1846, and April 1st, 1848, the Erie Railway Company and its successors will be required to erect a permanent and substantial bridge across the river Delaware, between Sims Cliff and the rope ferry at Matamoras, with a double track, one of which shall be suitable for laying a railroad track thereon, and generally to comply with the provisions of the Acts of Assembly referred to, and attention is directed to an application about to be made for reargument in the name of the Commonwealth of Pennsylvania against the Erie Railway Company by *scire facias*, issued out of the Supreme Court of Pennsylvania, to the last Monday of July, 1871, No. 150.

April 15, 1878. GEORGE LEAR, *Attorney-General.*

"Copy."

The Chemung Railroad Company hereby gives notice that on the 2d day of December, 1875, judgment was recovered in the Supreme Court of the State of New York, and entered in the office of the Clerk of the City and County of New York, in favor of the said Chemung Railroad Company against the Erie Railway Company, for the sum of $42,856$\frac{95}{100}$. That no part of the same has been paid. That the said Chemung Company has not been made a party to, and has not been affected by any of the proceedings that have been instituted under which the sale now about to be had is alleged to be authorized or directed. That it insists that its lien and claims upon and and equity of redemption in the properties now about to be sold are in no wise affected, cut off, barred or foreclosed by any of such proceedings or by such decree, and will not be by any such sale; and that any purchaser thereat will acquire such properties subject and subordinate to the lien, claims, rights and equities of said Chemung Railroad Company.

New York, April 24, 1878. THE CHEMUNG RAILROAD COMPANY,

by JAMES P. LOWREY, *its Attorney.*

Property Embraced in the Inventory which Mr. Jewett, as Receiver, has Disposed of.

Stocks and Bonds.

Brooks Locomotive Works, 990 shares of stock of $100 each.
Hoboken & Jersey City H. R. R., 60 shares of stock of $100 each.
Jefferson Car Company, 2,784 shares of stock of $100 each.
Northern Railroad of N. Jersey, 9 shares of stock of $100 each.
Niagara Bridge, 5 per cent. on 828 shares of stock of $100 each.
United States Towboat Company, 75 shares of stock of $100 each.
Erie Railway Preferred Stock, $\frac{65}{100}$ of a share of stock of $100 each.
Buffalo, New York and Erie Railroad, 49 (gold) bonds of $1,000 each.
Long Dock Company, 11 bonds of $1,000 each.
Montclair Railway Company, 100 bonds of $1,000 each.
Nyack & Northern Railway, 3 bonds of $1,000 each.
Sundry amounts received from insurance companies, &c., for loss by fire of buildings, fixtures, &c., amounting to $2,747 73
Amount received from Northern Central Railway Company, being balance of account, in consideration of sale of track laid on the right of way of the Chemung Railroad, between Horseheads and the junction of the Chemung Railroad with the Erie Railway, main line.... ..... 733 78

Except as above set forth, the property of the Erie Railway Company entered in its inventory remains substantially the same as when said inventory was made, with the exception that, so far as it embraces materials such as iron, fuel, oil, and other supplies for use in the repair and maintenance of the

road, and in the operation thereof, such portions as have been from time to time used or consumed, have been replaced by the purchase of materials and supplies of a like character, so far as necessary to the daily operations of the road.

Property Not Embraced in the Inventory which Mr. Jewett, as Receiver, has Acquired and now has.

2 Car Floats (New York Harbor).
9 Locomotives.
65 Passenger, Baggage, Mail and Express Cars.
1,445 Four-wheeled Coal Cars (Jefferson Car Company).

Stocks and Bonds.

Montclair & Greenwood Lake Railway Company, 2,000 shares of stock of	$50 each.
National Stock Yards Company, 5,495 shares of	100 "
Union Steamboat Company, 1,250 shares of	100 "
United States Express Company, 5,000 shares of	100 "
Erie International Railway Company, 500 shares of	100 "
Suspension Bridge & Erie Junction Railroad Company, 2,950 shares of	100 "
Paterson & Newark Railroad Company, 145 bonds of	1,000 "
Paterson & Newark Railroad Company, 188 bonds of	500 "
Pavonia Horse Railroad Company, 2 bonds of	500 "
National Stock Yards Company, 10 bonds of	1,000 "
Northern Central Railway Company, 350 5 per cent. Second Mortgage Bonds of	1,000 "
Glenwood Coal Company, 2 bonds of	1,000 "

Property Acquired by Mr. Jewett, as Receiver, and Not Embraced in the Inventory, which he has Disposed of.

Brooks' Locomotive Works stock, 990 shares of	$100 each.
Buffalo, New York & Erie Railroad Bonds, 255 bonds of	1,000 "
Northern Central Railway 7 per cent. Income Bonds, 350 bonds of	1,000 "

Executory Contracts of the Erie Railway Company.

Sundry Railroad Companies.

Albany & Susquehanna and Syracuse & Binghamton Railroad Companies. Dated October 9, 1868.

Joint use of depot at Binghamton.

Atlantic & Great Western Railroad Company. Dated January 15, 1873.

Traffic over leased lines railroads.

Boston, Hartford & Erie Railroad Company. Dated October 8, 1867; December 18, 1867; July 9, 1868.

Buffalo Creek Railroad Company with Erie Railway Company and The Union Dry Dock Company. Dated August 26, 1871.

Dunkirk & State Line Railroad Company with New York & Erie Railroad Company. Dated January 30, 1851.

Buffalo & State Line, Dunkirk & State Line, New York & Erie, and Buffalo & Rochester Railroad Companies. Dated April 15, 1851.

New York & Erie, Buffalo & Rochester, Rochester & Syracuse, and Syracuse & Utica Railroad Companies. Dated April 15, 1851.

Erie Railway Company with Buffalo & Jamestown Railroad Company. Dated July 24, 1874.

Crossing tracks of Erie Railway Company at Dayton, New York.

Chemung Railroad Company (Northern Central Railway Company lessees) with Erie Railway Company. Dated May 10, 1872.

Interchange of traffic.

Delaware, Lackawanna & Western Railroad Company with Erie Railway Company. Dated March 1, 1871.

Traffic over Syracuse & Binghamton Railroad.

Erie Railway Company with Grand Trunk Railway Company. Dated January 8, 1875.

Mutual facilities at International Branch and Black Rock.

Erie Railway Company with Great Western Railway Company. Dated January 1, 1875.

Interchange of traffic.

Erie Railway Company with Ithaca & Athens Railroad Company. Dated March 14, 1870.

Crossing of Erie Railway Company's tracks, Shepard's Creek.

Junction Railroad Company and New York Central & Hudson River Railroad Company with Erie International and Erie Railway Companies. Dated August 25, 1874.

Exchange of loads, and crossing of tracks, &c.

Lake Shore & Michigan Southern Railroad Company.

Atlantic & Great Western Railroad Company.

Alleghany Valley Railroad Company.

Oil Creek & Alleghany River Railroad Company.

Dunkirk, Alleghany Valley & Pittsburgh Railroad Company, with Erie Railway Company. Dated October 1, 1874.

Equitable division of petroleum traffic.

New York Central & Hudson River Railroad Company. Dated December 23, 1870.

Decision of commissioners fixing amount of compensation to be paid by the Suspension Bridge & Erie Junction Railroad Company, for crossing tracks of the New York Central & Hudson River Railroad Company.

Erie Railway Company, with New Jersey and New York Railroad Company. Dated September 9, 1874.

Use of Erie Railway Company tracks at Jersey City and Spring Valley.

Erie Railway Company, with New York and Oswego Midland Railroad Company. Dated April 30, 1872.

Crossing of Erie Railway Company tracks at Jersey City.

New Jersey Midland Railway Company, with Erie Railway Company. Dated March 4, 1872.

Use of lands and crossings of Erie Railway Company.

Erie Railway Company, with Northern Central Railway Company. Dated March 3, 1875.

Running trains of Utica, Ithaca & Elmira Railroad over the Chemung Railroad tracks, &c.

Pennsylvania Railroad Company, with Erie Railway Company. Dated July 1, 1874.

Equitable division of Live Stock Traffic.

Pennsylvania Railroad Company, with Erie Railway Company. Dated July 2, 1874.

Establishing Bureau of Commissioners.

Rochester, Nevada & Pennsylvania with Buffalo, New York & Erie Railroad Company, and the Erie Railway Company. Dated September 4, 1874.

Crossing of tracks at Caledonia and Rosses.

Utica, Ithaca & Elmira Railroad Company, with Erie Railway Company. Dated January 2, 1875.

Interchange of business facilities.

Erie Railway Company with Sterling Iron & Railway Company and Sterling Mountain Railway Company. Dated July 26, 1864.

Transportation agreement.

Erie Railway Company, with Sterling, Iron & Railway Company, and Sterling Mountain Railway Company. Dated August 6, 1868.

Transportation agreement.

Erie Railway Company with Southern Central Railroad Company, Dated October 30, 1869.

Crossing of tracks and use of lands and interchange of traffic.

Erie Railway Company with Sodus Bay, Corning & New York Railroad Company. Dated December 22, 1871.

Transportation facilities.

Erie Railway Company with Delaware & Hudson Canal Company. Dated January 15, 1869. Tripartite agreement Delaware & Hudson Canal Company, Erie Railway Company, Jefferson Railroad Company, 8th April, 1875.

Transportation of coal, &c.

Delaware, Lackawanna & Western Railroad Company (lessees of Valley Railroad Company) with Erie Railway Company. Dated January 15, 1870.

Transportation facilities.

Valley Railroad Company with Erie Railway Company. Dated November 30, 1869.

Transportation facilities.

N. Marsh, Receiver Erie Railway Company, with Warwick Valley Railroad Company. Dated July 1, 1861.

Transportation facilities.

Coal Companies.

Blossburg Coal Company, Erie Railway Company and Tioga Railroad Company. Dated August 1, 1871.

Transportation of coal and merchandise.

Delaware & Hudson Canal Company. Dated September 2, 1868, and January 15, 1869.

Transportation of coal, &c.

Delaware & Hudson Canal Company. Dated April 8, 1875.

Modifying contract of September 2, 1868.

Erie Railway Company, with Fall Brook Coal Company. Dated May 12, 1865.

Transportation of coal, &c.

Dated November 20, 1865.

Modifying contract of May 12, 1865.

Dated March 18, 1871.

Supplement to May 12, 1865, and November 20, 1865.

Dated July 2, 1866.

Transferring Horseheads switch, &c.

Erie Railway Company, with Lackawanna & Susquehanna Coal & Iron Company. Dated May 24, 1869.

Transportation of coal.

Dated December 7, 1869.

Modifying contract of May 24, 1869.

Erie Railway Company, with Fall Creek Bituminous Coal Company. Dated July 22, 1869.

Transportation of coal.

Erie Railway Company, to Morris Run Coal Company. Dated January 4, 1867.

Lease of land at Corning, N. Y., for coal depot, &c.

Erie Railway Company, with Pennsylvania Coal Compnny. Dated June 9, 1862.

Transportation of coal and lease of.

Dated January 1, 1864.

Hawley Branch.

Dated June 9, 1862.

Special agreement for transportation of coal.

Dated January 27, 1865.

Modifying contract of June 9, 1862.

Dated July 12, 1866.

Modifying contract of June 9, 1862.

Dated August 10, 1869.

Modifying contracts of June 9, 1862, and July 12, 1866.

Dated November 20, 1869.

Purchase of coal cars, &c.

Dated January 12, 1870.

Dated August 23, 1869.

Construction of coal pier at Weehawken, and transportation of coal thereto.

Dated June 9, 1862.

Construction of road and guaranty of contract.

Contracts, &c., with Individuals and Companies.

Bischoffsheim & Goldschmidt with Erie Railway Company. Dated May 8, 1872.

Relating to First Consolidated Mortgage Bonds.

Bischoffsheim & Goldschmidt with Erie Railway Company. Dated July 12, 1872.

Relating to sterling loan on First Consolidated Mortgage Bonds.

Erie Railway Company with Cooper & Hewitt. Dated July 30, 1868.

Cooper & Hewitt assuming the contract between the Erie Railway Company and the Sterling Iron & Railway Company and the Sterling Mountain Railway Company, of July 26, 1864, relating to the transportation of products, &c., of the latter corporations.

Erie Railway Company with Cooper & Hewitt and the New Jersey Steel & Iron Company. Dated October 16, 1868.

Relating to the manufacturing and the re-rolling of rails required by the Erie Railway Company.

Erie Railway Company with Cooper & Hewitt and the New Jersey Steel & Iron Company. Dated May 19, 1871.

Modifying the contract of October 16, 1868.

New Jersey Steel & Iron Company to the Elmira Iron & Steel Rolling Mill Company. Dated May 20, 1871.

Assignment of contracts with Erie Railway Company and Cooper & Hewitt, of October 16, 1868, and May 19, 1871.

Erie Railway Company with Orville Dodge, Levinus W. Cornwall and Jesse Colby (lessees of Taylor's Park, near Aldin Station). Dated October 8, 1874.

Relating to transportation of excursionist trains to and from said park.

Erie Railway Company with Gustavus A. Fuller, Eugene W. Guindon, John W. Peck and John H. Berdon (proprietors of the Fuller's Paterson Express). Dated April 18, 1875.

Relating to express facilities on trains between New York City and Paterson, N. J.

Farmers' Loan & Trust Company. Dated December 9, 1870.

Proposition to Erie Railway Company for terms of trusteeship in regard to the First Consolidated Mortgage Bonds.

Erie Railway Company. Dated December 10, 1870.

Acceptance of above-mentioned proposition by Jay Gould, President, on behalf of the Erie Railway Company.

Hoboken Land and Improvement Company. Dated September 10, 1874.

Consent to permit the Erie Railway Company erecting a fence on the land of the H. L. & I. Co. to enclose and protect the Weehawken Dock Oil Yard.

Erie Railway Company with McCartan & Logan. Dated April 6, 1875.

Agreement for insuring grain lightered in and about New York Harbor by McC. & L.

Erie Railway Company with James McHenry. Dated October 23, 1874.

Relating to Loan by Erie Ry. Co. to J. McH. on collateral of capital stock of the Cinn., Col., Cleveland & Ind. R. R. Co.

Erie Railway Company with J. S. Morgan & Co. Dated December 8 and 14, 1871.
Relating to Sterling Loan Bonds.

Erie Railway Company with Oceanic Steamship Navigation Company. Dated September 1, 1870.
Relating to use of Pier adjoining the Pavonia Ferry at Jersey City.

Erie Railway Company with P. P. Parrott & Co. Dated May 22, 1872.
Transportation of Freight.

Passaic Water Company with Erie Company. Dated November 14, 1874.
Agreement for supplying water within the limits of the City of Paterson, N. J., for R. R. purposes.

Homer Ramsdell and wife with Erie Railway Company. Dated June 1, 1870.
Leasing Freight and Passenger Depot at Newburgh, with privilege of purchasing the premises.

Homer Ramsdell with Erie Railway Company. Dated October 13, 1869.
Contract for furnishing for forty freight cars to be used in Newburgh business, and for the purchase of same by quarter-yearly installments.

Erie Railway Company with Ramapo Manufacturing Company. Dated February 15, 1866, October 29, 1867.
Transportation of freight.

Erie Railway Company with Railway Advertising Company. Dated February 28, 1873.
Relating to advertising in depots of the company. Dated March 1, 1874.
Relating to advertising in ferry boats of the company.

Erie Railway Company with Lauren C. Woodruff. Dated November 8, 1871.
Agreement to operate Erie & Genesee Valley Railroad on its completion and connection with Erie Road.

Erie Railway Company with J. H. Devereux, Receiver, Atlantic & Great Western Railroad and Standard Oil Company. Dated March 1, 1875.
Lease of Weehawken Dock Oil Works, &c.

Erie Railway Company with J. H. Devereux, Receiver, Atlantic & Great Western Railroad and Standard Oil Company. Dated March 1, 1875.
Transportation of petroleum, &c.

Erie Railway Company with J. H. Devereux, Receiver, Atlantic & Great Western Railroad and Standard Oil Works. Dated March 1, 1875.
Modification of petroleum, &c.

Long Dock Company to New York & Erie Railroad Company. Dated July 1, 1856.
Contract of lease, &c.

Long Dock Company to New York & Erie Railroad Company. Dated April 1, 1857.
Supplement to lease, &c.

Erie Railway Company with London Banking Association (limited). Dated March 6, 1874.
Relating to Second Consolidated Mortgage Bonds.

Erie Railway Company with Jay Gould. Dated December 18, 1872.
Agreement of settlement.

Erie Railway Company with Erie & Atlantic Sleeping Coach Company. Dated Sept. 5, 1871.
Use of drawing-room coaches, and other facilities.

Erie Railway Company with Union News Company. Dated December 19, 1874.
Granting privileges on trains, in stations, &c., for selling newspapers, &c.
Dated December 19, 1876.
Renewed by Receiver.

Erie Railway Company with George M. Diven. Dated December 1, 1868.
Supplying water at Elmira.
Tobias New with Erie Railway Company. Dated November 28, 1873.
To keep in repair roofing of engine house at Hawley, Pa.
Erie Railway Company with Kellin R. Smith. Dated Feb. 19, 1875.
Use of land for tracks at Addison, N. Y.
Sterling Iron & Railroad Company, Erie Railway Company, with W. H. Taylor. Dated Jan. 4, 1871.
Transportation of ice from Greenwood Lake.
Delaware & Hudson Canal Company with Erie Railway Company and Jefferson Railroad Company, Dated January 15, 1869.
Traffic, &c.
Delaware & Hudson Canal Company with Erie Railway Company and Jefferson Railroad Company. Dated April 8, 1875.
Traffic, &c.
Atlantic & Great Western Railroad Company with Erie Railway Company. Dated May 6, 1874
Agreement to pay interest on Atlantic & Great Western bonds, in consideration of transfer of voting power on C., C., C. and I. Stock.
Atlantic & Great Western Railroad Company with Erie Railway Company and Swinburne and others, trustees. Dated May 6, 1874.
Agreement to guarantee interest of Western Extension Trust Bonds, in consideration of transfer of certain shares of C., C., C. and I. Stock to be made.

Contracts for Bridges.

Watson Manufacturing Company. Dated August 2, 1872.
Pawpack Bridge at Hawley, Pa. Guaranteed for 10 years.
Watson Manufacturing Company. Dated April 23, 1873.
Big Flats Bridge. Guaranteed for 10 years.

Contracts for Steel Rails.

John A. Griswold & Co. Dated August 27, 1874.
2,000 tons Bessemer steel rails. Guaranteed for 5 years.
Pennsylvania Steel Company. Dated August 18, 1874.
2,000 tons Bessemer steel rails. Guaranteed for 5 years.
Pennsylvania Steel Company. Dated November 24, 1874.
2,000 tons Bessemer steel rails. Guaranteed for 5 years.
Pennsylvania Steel Company. Dated December 17, 1875.
5,000 tons Bessemer steel rails. Guaranteed for 5 years.

Freight Despatch Lines.

Great Western Despatch (South Shore Line). Dated January 1, 1873.
Grank Trunk Railway (Commercial Express). Dated January 5, 1875.
Metropolitan Steamship Company. Dated September 20, 1866.
Modified October 30, 1867.
" April 14, 1868.
" October 16, 1871.
Western Transportation Company. Dated February 11, 1869.

Passenger Lines.

Liverpool, New York & Philadelphia Steamship Company, and others. Dated December 15, 1873.
North German Lloyd Steamship Company. Dated February 1, 1876.
Compagnie Generale Transatlantique. Dated February 4, 1876.

Telegraph.

Western Union Telegraph Company. Dated June 14, 1864.

Records, Books and Muniments of Title, Patent Rights and Licenses belonging to the Erie Railway Company, assigned to and in possession of the Receiver.

Patent Rights and Licenses.

Henry Tanner. Dated June 15, 1866.
Ventilating railroad cars.

Whysall, Powett & Livingston. Dated September 11, 1866.
Process for tempering steel springs.

James D. Mowry, Trustee, &c. Dated December 14, 1866.
License under Tanner's brake patent.

Ezra Miller & H. G. Brooks. Dated December 21, 1866.
License of Miller's patents for car couplings, car coupler and buffer.

Henry Tanner. Dated May 29, 1868.
Car trucks.

Francis A. Stevens. Dated May 6, 1871.
Car brakes.

Locomotive Engine Safety Truck Company. Dated March 13, 1873.
Locomotive trucks.

John Adams. Dated April 7, 1875.
Cleaning cotton waste, &c.

Cyrus G. Roberts to Jacob H. Vreeland. Dated April 20, 1877.
Smoke stack.

Vreeland takes license to himself and successors as master mechanic.

Books of Record (Secretary's Office).

6 Minutes of Directors.
6 Minutes of Executive Committee.
2 Minutes of Finance Committee.
1 Minutes of Special Committees.
6 Records of Contracts, &c.
3 Records of Land Titles.
1 Register of Insurance.
1 Record of Fire Losses.
1 Alphabet of Insurance Policies.
1 Record of Premiums paid and returned.
1 Record of Expirations of Policies.
1 Insurance Copy Letter Book.
2 Vouchers Copy Letter Book.
2 Letter Copy Books (Secretary's).
20 Records of Minutes, Letters, Land Titles and Contracts of the New York & Erie Railroad Company.
68 Minute Books, Contract Records, Stock Certificate and Transfer Books of other corporations controlled by Erie Railway Company.
12 Corporate Seal Presses and Seals of other corporations controlled by Erie Railway Company.
2 Corporate Seal Presses and Seals of Erie Railway Company.
19 Volumes Inventory of Erie Railway Company.

Books of Record—Secretary's Office. (Transfer Department).

1 Bond Ledger.
1 " Register, First Mortgage.
1 " " Second "
2 " " Third "
1 " " Fourth "
1 " " Fifth "
1 " " Convertible.
4 " " First Consolidated Mortgage.
1 Receipt Book.
2 Receipts of Stock.
6 Record Book, Common Stock, New York.
1 " " " " London.
2 " " Preferred " New York.
1 " " " " London.
1 Stock Ledger, Common Stock, New York, with separate index.
1 " " London, with separate index.
1 " Preferred Stock, New York, with separate index.
1 " " London, with separate index.
4 Stock Register, Common Stock.
2 " " Preferred "
5 " " Common " New York.
1 " " Preferred " "
2 " " Common and Preferred Stock, London.
8 Transfer Books, Common Stock.
6 " " Preferred "
3 Transfer Record Books, Common Stock, New York.
1 " " Book, Preferred Stock, "
2 " " Books, Common Stock, London.
3 " " " Preferred " "
$7\frac{112}{500}$ Certificate Books, Common Stock, 10 shares, 500 certificates each.
$5\frac{143}{500}$ " " 100 shares, 500 certificates each.
$2\frac{153}{500}$ " " blank shares, 500 certificates each.
$3\frac{6}{500}$ " Preferred Stock, 10 shares, 500 certificates each.
$2\frac{134}{500}$ " " blank shares, 500 certificates each.

Also books of account, records and documents in the various offices of the Erie Railway Company at the general office of the company at the City of New York, and on the line of the road, being assigned to and in the possession of the Receiver, and his officers and agents.

Whereas, The judgment entered on the seventh day of November, in the year 1877, for the foreclosure and sale of the property of the Erie Railway (in the suit of the Farmers' Loan and Trust Company against the Erie Railway Company and others) directs that an assignment by the first-named company, of certain books, records, and documents, be made to the Receiver, Hugh J. Jewett, on the request of said Receiver, and such request has been made;

And whereas, The directors of the Erie Railway Company, by a resolution adopted the 22d day of November, 1877, have duly authorized its Secretary, Augustus R. Macdonough, to use its name and affix its corporate seal, and act in its behalf in making such assignment:

Now, therefore, in obedience to such judgment, and in execution of such authority, the said Erie Railway Company, by A. R. Macdonough, its Secretary and agent, specially authorized, and in considera-

tion of one dollar, paid by said Receiver, the receipt whereof is hereby acknowledged, does hereby assign, transfer, and set over to said Receiver, all the books of account, and all records, documents, and papers in its possession, or in which it has any ownership or interest, wherever the same may be situated, constituting evidence or muniments of title to the mortgaged premises, or any part thereof, or which are necessary or useful to the proper use or enjoyment of the mortgaged premises or property, or any part thereof, by the purchaser or purchasers thereof, their representatives or assigns.

In witness whereof, this instrument has been duly executed, this 3d day of January, A. D. 1878, by attaching hereto the seal and name of the Erie Railway Company, and the signature of its said agent and Secretary.

The Erie Railway Company,

[L. S.] By A. R. MACDONOUGH, *Secretary.*

In presence of E. D. HAMMOND.

Leases of Railroads, Piers, Bulkheads and Water-fronts, Lots in New York City, Lots and Offices along the line of the Road, belonging to the Erie Railway Company, already assigned to the Receiver, and now in his possession.

The leasehold estates of the Erie Railway Company are not subject to any encumbrances, save and except only the encumbrance of the several general mortgages of the New York & Erie Railroad Company, known as the First, Second, Third, Fourth and Fifth Mortgages, and those of the Erie Railway Company, known as the First and Second Consolidated Mortgages.

These mortgages cover generally the interest and estate of the Erie Railway in and to the several leaseholds enumerated, consisting of railroads, pier and water-fronts, lots in New York City, and miscellaneous real estate upon or along the line of the road and elsewhere, acquired for its convenient operation.

Of the several railroads held by the Erie Company under lease, and which are to be sold as part of the mortgaged premises, the following are covered by mortgages securing bonds, the interest of which is paid by the Erie Railway, directly or indirectly, as rent, in whole or in part, under the respective leases, viz.:

The Newark & Hudson Railroad	$250,000
" Paterson, Newark & New York Railroad	500,000
" Montgomery & Erie Railroad	177,000
" Goshen & Deckertown Railroad	246,000
" Honesdale Branch Railroad	300,000
" Jefferson Railroad	2,000,000
" Buffalo, Bradford & Pittsburgh Railroad	580,000
" Buffalo, New York & Erie Railroad	2,380,000
" Avon, Geneseo & Mount Morris Railroad	20,000
" Suspension Bridge & Erie Junction Railroad	1,000,000

Leased Roads.

Atlantic & Great Western Railroad Company. Dated May 6, 1874.
Three separate agreements.

Avon, Geneseo & Mount Morris Railroad Company. Dated December 27, 1871.

Buffalo, New York & Erie Railroad Company. Dated February 27, 1863.
Modification of ditto, dated April 15, 1874.

Buffalo, Bradford & Pittsburgh Railroad Company. Dated January 5, 1866.

Erie & Genesee Valley Railroad, by L. C. Woodruff, lessee. Dated November 8, 1871.

Goshen & Deckertown Railroad Company. Dated January 18, 1872.

Hoboken Land & Improvement Company, Venango Oil & Transportation Company, Isaiah Blood and others, with Weehawken Docks. Dated May 1, 1867.

Modifying a contract, dated October 18, 1863, between the Hoboken Land & Improvement Company and Venango Oil & Transportation Company.

Hoboken Land & Improvement Company with Erie Railway Company. Dated December 11, 1868.

Leasing their Weehawken Branch Road and tracks for use of sidings.

Dated November 4, 1869.

Lease of land at Weehawken for tracks.

Jefferson Railroad Company. Dated January 1, 1869.

Lease of Honesdale Branch.

Dated January 1, 1869.

Dated November 30, 1870.

Lease and modification of Carbondale Branch.

Montgomery & Erie Railroad Company. Dated December 16, 1871.

Newburgh & New York Railroad Company. Dated October 5, 1866.

New York & Fort Lee Railroad Company. Dated December 18, 1868.

Northern Railroad Company of New Jersey. Dated December 31, 1868.

Paterson & Newark Railroad Company. Dated September 8, 1868.

Pennsylvania Coal Company.. Dated January 9, 1862.

Dated January 1, 1864.

Lease of Hawley Branch (see Coal Company's contracts).

Newark & Hudson Railroad Company. Dated January 30, 1872.

Newark & Hudson Railroad Company. Dated October 30, 1872.

Rochester & Genesee Valley Railroad Company. Dated July 1, 1871.

Suspension Bridge & Erie Junction Railroad Company. Dated July 13, 1870.

Union Railroad Company, including the Paterson & Hudson Railroad and the Paterson & Ramapo Railroad. Dated September 10, 1852.

Leases of Piers, Bulkheads, and Water Fronts.

City of New York, to David Tracey. Dated December 1, 1875.

Assigned to Erie Railway Company, Pier 7, East River, N. Y. Unexecuted on part of the Erie Railway Company.

City of New York, to Redmond Forrestal. Dated ,

Assigned to Erie Railway Company, west half of Pier 8, &c., East River, N. Y. Unexecuted on part of the Erie Railway Company.

Parsons & Decatur, to Erie Railway Company. Dated May 4, 1869.

East half of Pier 8, East River, N. Y.

City of New York, to Erie Railway Company. Dated January 18, 1870.

North half of Pier 29, North River, N. Y.

Erie Railway Company, to New York and Charleston Steamship Company. Dated February 1, 1871.

Sublease of north half of Pier 29, North River.

Johannes Alsdorf, to H. J. Jewett, Receiver. Dated April 14, 1877.

Bulkhead between Piers 29 and 30, North River.

City of New York, to Erie Railway Company. Dated May 1, 1864.

Pier No. 30, North River, one-half Slip between 30 and 31, one-half of Bulkhead, same, and erection on north side of No. 30, the L and Slip on south side of Pier 30, North River. Lease expired and premises used under verbal agreement with Department of Docks.

City of New York, to Erie Railway Company. Dated April 25, 1865.

Pier No. 31, North River, one-half of Bulkhead between Nos. 30 and 31, one-half of the Bulkhead between Nos. 31 and 32. Lease expired and premises used under verbal agreement with Department of Docks.

City of New York, to Wm. Sneden & Co. Dated April 25, 1866.

Assigned to Raritan & Delaware Bay Railroad Company; reassigned to Erie Railway Company.

Pier No. 32, one-half of Bulkhead between Nos. 31 and 32, one-half of Bulkhead between Nos. 32 and 33. Lease expired and premises used under verbal agreement with Department of Docks.

Department of Docks, to Erie Railway Company. Dated September 2, 1873.

Lots under water, covered by shed, on north side of Pier No. 32, North River, and covered extension of Bulkhead between Piers Nos. 31 and 32, North River.

Jersey Shore Improvement Company to Erie Railway Company. Dated December 31, 1872.

Pier No. 10, North River, Jersey City, N. J. Lease expired, premises used under verbal agreement.

Erie Railway Company, to John Maxwell. Dated May 13, 1875.

Strip of water front on North River, at Newburgh, N. Y.

Leased Lots in New York City.

Benjamin Moore, Executor, Trustee, &c., to Erie Railway Company. Dated July 1, 1864.

21 lots, Nos. 843–863 (22d and 23d streets), and North River, including bulkhead in front of same.

Clement C. Moore to Thomas Bell and John P. Bell. Dated June 1, 1860.

6 lots, Nos. 840–842, 864–866 (22d and 23d streets, between 11th and 13th avenues). August 1, 1873, assigned to Erie Railway Company.

Mary Clarke Ogden to Thomas Bell. Dated August 1, 1873.

2 lots, Nos. 834 and 835 (11th avenue, between 22d and 23d streets). August 1, 1873, assigned to Erie Railway Company.

William T. Moore to Thomas Bell. Dated August 1, 1873.

4 lots, Nos. 836–839 (11th avenue, between 22d and 23d streets). August 1, 1873, assigned to Erie Railway Company.

Clement C. Moore to William S. Popham, Augustus Bleecker, and Lewis C. Popham. Dated April 10, 1856.

8 lots, Nos. 870–877 (23d street, between 10th and 11th avenues); 2 lots, Nos. 896, 897 (24th street, between 10th and 11th avenues). June 23, 1869, assigned to James Fisk, Jr. April 30, 1870, deed to James Fisk, Jr. April 30, 1870, assigned to Erie Railway Company. May 2, 1870, assigned to Erie Railway Company.

Thomas Bell, to John P. Bell and William R. Bell. Dated August 6, 1868.

Sub-lease of lots Nos. 834–842, and 864–866, assumed by Erie Railway Company.

Erie Railway Company, to John P. Bell and William R. Bell. Dated July 26, 1873.

Sub-lease of lots Nos. 843, 844, 862 and 863.

Erie Railway Company to Porter and Wetmore. Dated July 26, 1873.

Sub-lease of lot No. 861.

Lucretia E. Moore.

8 lots on W. 23d street, between 8th and 9th avenues. 9 lots on W. 24th street, between 8th and 9th avenues. Leased to various parties; leases assigned to Erie Railway Company.

Mary C. Ogden.

1 lot on W. 24th street, between 8th and 9th avenues. Lease vested by mesne assignments in Erie Railway Company.

Maria T. B. Moore.

1 lot on W. 23d street, between 8th and 9th avenues. 1 lot on W. 24th street, between 8th and 9th avenue. Leases vested by mesne assignments in Erie Railway Company.

Erie Railway Company, with William R. Barr. Dated December 1, 1870.

Elmira Car Works, &c.

John Fiskin, to Erie Railway Company. Dated January 11, 1875.

Freight office, Toronto, Canada.

Edward R. Hammott, Trustee, to Erie Railway Company. Dated January 1, 1874.

Ticket offices, 157 and 177 Exchange street, Buffalo, N. Y.

Erie Railway Company to Francis Weiss. Dated December 1, 1874.

Sub-lease office No. 177 Exchange street, Buffalo, N. Y.

National Citizens' Bank to Erie Railway Company. Dated March 25, 1875.

Freight and ticket office, 401 Broadway, N. Y.

New York City to New York & Erie Railroad Company. Dated July 1, 1850.

Block of ground occupied by Erie Buildings, N. Y.

Erie Railway Company to S. C. Jillson. Dated June 17, 1870.

Coal Yard at Hornellsville, N. Y.

Erie Railway Company to Van Riper & Co. Dated June 12, 1868.

Land at Nunda for water privileges.

Stocks of other Companies owned by the Estate of the Erie Railway Company, and held by the Receiver.

Stocks of other Companies held by the Receiver of the Erie Railway.

Buffalo, Bradford, & Pittsburgh Railroad Company. 20,132 shares.

Buffalo, New York and Erie Railroad Company. 5,759 shares.

Compressed Air Safety Brake Company. 305 shares.

Erie Railway Preferred Stock, Dividend Certificates, payable to bearer. Nine certificates, aggregating $39,549.

Erie Oil Car Company. 5,000 shares.

Erie International Railway Company. 500 shares.

Harbor Wrecking Company. 40 shares.

Hillside Coal & Iron Company. 9,993 shares.

Jefferson Railroad Company. 40,855 shares.

Keystone Coal & Transportation Company. 9,892 shares.

Lackawanna & Susquehanna Coal & Iron Company. 400 shares.

Long Dock Company. 7,977 shares.

Montclair & Greenwood Lake Railway Company. 2,900 shares.

Monticello & Port Jervis Railroad Company. 165 shares.

National Stock Yard Company. 7,817 shares.

Northwestern Mining & Exchange Company. 4,930 shares.

Nyack & Northern Railroad Company. 161 shares.

Newark & Hudson Railroad Company. 2,492 shares.

New York & New England Railroad Company. 1,000 shares.

Pavonia Horse Railroad Company. 440 shares.

Pennsylvania Transportation Company. 9,012 shares.
Paterson, Newark & New York Railroad Company. 4,995 shares.
Reno Company (preferred stock). 51 $\frac{44}{100}$ shares.
Southern Central Railroad Company. 899 shares.
Suspension Bridge & Erie Junction Railroad Company. 4,690 shares.
Towanda Coal Company. 4,492 shares.
United States Express Company. 5,000 shares.
Union Dry Dock Company. 146 shares.
Union Steamboat Company. 9,938 shares.
Wallkill Valley Railway Company. 898 shares.
Erie & Atlantic Sleeping Coach Company. 1,538 shares.
Bergen County Railroad Company. 80 shares.
Pavonia Ferry Company. 990 shares.

Bonds and Coupons owned by the Estate of The Erie Railway Company.

1. 488 Bonds Second Mortgage Towanda Coal Company, $500 each.
2. 500 Bonds Glenwood Coal Company, First Mortgage, $1,000 each.
3. 500 Bonds Glenwood Coal Company, Second Mortgage, $1,000 each.
4. 351 Coupons of Glenwood Coal Company Mortgages, $35 each.
5. 35 Bonds Suspension Bridge and Erie Junction Railroad Company, $1,000 each.
6. 300 Bonds Lamont Mining and Railroad Company, $100 each.
7. 1 Bond Mariposa Company, $1,000.
8. 185 Bonds Buffalo, Bradford & Pittsburgh Railroad Company, $1,000 each.
9. 615 Bonds Paterson, Newark & New York Railroad, part $1,000 each, part $500 each.
10. 250 Bonds Newark and Hudson Railroad, $1,000 each.
11. 15 Bonds New York and Pennsylvania Bluestone Company, $1,000 each.
12. 714 Bonds Jefferson Railroad Company, $1,000 each.
13. 166 Bonds Newburgh and New York Railroad, $1,000 each.
14. 185 Bonds Pavonia Horse Railroad, $500 each.
15. 34 Bonds New Jersey and New York Railroad, $1,000 each.
16. 665 Bonds National Stock Yard Company, $1,000 each.
17. 350 Bonds Northern Central Railway, Second Mortgage, $1,000 each.
18. 600 Bonds Erie Railway Company, Second Consolidated Mortgage, $1,000 each.
19. 629 Bonds Boston, Hartford & Erie Railway, $1,000 each.

Executory Contracts of the Receiver.

1875. May. Charles Robinson with Receiver. Agreement for transfer of lease of stock yards in 39th, 40th and 41st Streets, N. Y. City.
Order July 28th, 1875.

" July 10. United States Tow Boat Co. to Erie R. Co. Bill of sale, tow boat *J. B. Van Houton.*

" " 30. Charles Robinson to E. R. Co. and Receiver. Agreement to transfer National Stock Yard Co. stock.
Order July 28th, 1875.

" Sept. 1. N. Y. Produce Exchange and others with E. R. Co. and Receiver. Agreement relating to inspection, &c., of grain.

1875, Oct. 2. Havemeyers & Elder with Receiver. Agreement relating to transportation of freight. Order Nov. 8th, 1875.

" Nov. 1. Andrew Brown with Receiver. Agreement relating to transportation of freight. Order Nov. 8th, 1875.

" Dec. 17. Pennsylvania Steel Co. to Receiver. Guarantee of steel rails sold to E. R. Co.

" " 31. Cincinnati, Hamilton & Dayton R. R. Co., Receiver of Erie R. Co. and A. & G. W. R. R. Co. Agreement for interchange of traffic.

1876. Jan. 28. National Stock Yard Co., Erie Ry. Co., and the Receiver to John McPherson. Lease of stock yards.

" " 31. Amos R. Eno to Erie Ry. Co. Lease of office No. 185 Fifth Avenue, N. Y.

" Feb. 1. North German Lloyds Steamship Co., Erie Railway Co. and Receiver. Agreement for emigrant traffic.

" " 4. General Transatlantic Steamship Co., Erie Railway Co. and Receiver. Agreement for emigrant traffic.

" " 8. Erie Railway Co. to James Garrans. Lease of Dunkirk saloon.

" " " Nathalie E. Baylis and others to Erie Railway Co. Lease of office 529 Broadway, N. Y.

" " 15. Erie Railway Co. and Receiver, Penn. and N. Y. Canal and Railroad Co. and Lehigh Valley Railroad Co. Agreement for laying third rail and interchange of traffic. Order February 21st, 1876.

" March 20. Receiver to W. H. Brower. Sub-lease of part of premises leased from Amos R. Eno (185 Fifth Avenue, N. Y.)

" " 31. Receiver with Del., Lack. & West. Railroad Co. Agreement for trackage, &c., between Binghampton and Owego.

" April 8. N. Y. Produce Exchange and others, &c. Supplement to agreement of Sept. 1, 1875.

" " 18. Wm. Utz to Erie Railway Co. Lease of office in Hoboken, N. J.

" May 1. Matthew Kane to Erie Railway Co. Lease of stables in W. 24th Street, N. Y.

" " " James F. Fulton, Jr., to Receiver. Lease of office, Niagara Falls.

" " 3. F. C. Dinning to Erie Railroad Co. and Receiver. Agreement to confirm title to right of way on land in Elmira, N. Y.

" " 25. Erie Railway Co. and Receiver to Brooks Locomotive Works. Temporary lease of Locomotive Works at Dunkirk, N. Y. Also agreement of settlement of accounts. Order June 21st, 1876.

" July 1. Lange, Little & Co. with Receiver. Agreement for printing, &c.

" " 21. Reconstruction Trustees. Agreement. Order August 12th, 1876.

" Aug. 8. N. Y. Produce Exchange and others. Supplement to agreement of Sept. 1, 1875.

" Oct. 28. Erie Railway Co. Receiver, Morris & Essex Railroad Co. and Delaware, Lack. & West. Railroad Co. Agreement for exchange of lands in New Jersey. Order May 16th, 1876.

" Nov. 1. Receiver of Erie Railway Co., Tioga Railroad Co., and Blossburg Coal Company. Agreement of trackage and interchange of traffic.

" " 6. James H. Conant with Receiver. Agreement for transportation of ice.

" " 11. Receiver with Louis J. Bennett. Agreement for transportation of lime, &c.

" " 15. Receiver with Erie North Shore Despatch Consolidated Line. Agreement for freight transportation, &c.

" " 17. Lehigh Valley Railroad Co. Supplement to agreement of Feb. 15, 1876.

" Dec. 5. Temporary modification of lease of Montgomery & Erie Railroad.

1876, Dec. 26. Temporary modifications of lease of Goshen & Deckertown Railroad.
" " 19. Union News Company with Receiver. Agreement for Refreshment Stands, &c.
1875. Nov. 13. Extension of Union News Company contract for train privileges.
1877. Jan. 1. Receiver with American Transfer Company. Agreement for laying oil pipes, &c.
Order February 15, 1877.
" " 10. Elizabeth M. Blake with Receiver. Agreement for dockage of coal, &c.
" Feb. 1. Newberry & McMillan with Union Steamboat Company. Agreement for building cars, &c.
" May 2. Receiver's guarantee of same.
" Feb. 1. Receiver with United States Express Company. Agreement for the transportation of express freight, &c.
Order January 26, 1877.
" " 26. T. Chichester, Trustee, to Erie Railroad Company. Lease of office 3 Bowling Green, N. Y. City.
" March Elwood Estate to Receiver. Lease of office in Rochester, N. Y.
" " 3. Receiver to American District Telegraph Company. Sub-lease of premises 239 Broadway, N. Y.
" " 13. Knickerbocker Life Insurance Company. Consent to assignment of lease. Dated October 22, 1875, of ticket office, No. 239 Broadway, from Diamond Line to Receiver.
" " 28. John Ketchum to Receiver. Lease of ticket office, Buffalo, N. Y.
" April 19. Buffalo, New York & Erie Railroad Company, H. J. Jewett, Receiver, Erie Railway Company and Rochester & State Line Railroad Company. Agreement for crossing of Rochester & State Line Railroad Company at Le Roy, N. Y., over Buffalo, New York & Erie Railroad.
Order July 13, 1877.
" " 20. John R. Hall & Francis W. Carr to Receiver. Lease of freight office in Boston, Mass.
" " 20. Cyrus G. Roberts to Jacob H. Vreeland. License to use and manufacture locomotive spark arresters, as master mechanic at Jersey City, or his successors in said office.
" " 14. Johannes Alsdorf to Receiver. Lease of bulkhead between piers 29 and 30 North River, N. Y.
Order April 7, 1877 (renewal of leases).
" May 1. Receiver to Henry B. Smith. Lease of coal yard at Rochester, N. Y.
" " 8. Gautier Bros. with Receiver. Agreement for filling in Harsimus Cove, Jersey City.
" " 10. O. H. Perry with Receiver. Agreement for filling in Harsimus Cove, Jersey City.
" June 16. Peter Cumming and Agnes Rennie, Executors of Peter Rennie, deceased, with Receiver. Agreement to convey land in Jersey City.
Order May 29, 1877.
" July 2. New York Central & Hudson River Railroad Company with Receiver. Agreement for adjusting interchange of traffic.
" Aug. 24. William B. Guild to Receiver. Lease of office at Newark, N. J.
" " 27. Danforth Locomotive and Machine Company with Receiver. Agreement to build locomotive engines.
" " 27. Brooks Locomotive Works with Receiver. Agreement to build locomotive engines.
" Sept. 29. Receiver with M. H. Gillett & Co. Agreement for transportation of fresh meats.
" Oct. 22. Van Houten Bros. with Receiver. Agreement to build depot at Paterson, N. J.
" " 25. New York Stone Contracting Company with Receiver. Agreement to repair lining of Bergen Tunnel.

1877, Oct. 31. W. H. Axford with Receiver. Agreement to erect trestle on Pavonia Horseroad, foot of Bergen Hill, Jersey City.

" Nov. 1. Boston, Hoosac Tunnel & Western Railroad Company, Delaware & Hudson Canal Company, and Receiver of Erie Railway Company. Agreement for Eastern traffic, &c.
Order November 2, 1877.

" " 22. Joseph Richardson with Receiver. Agreement for building freight sheds, Jersey City.

" Dec. 1. Receiver to United States Express Company. Lease of land on Harsimus Cove, Jersey City.

" " 4. Passaic Rolling Mill Company with Receiver. Agreement for erecting bridges on Buffalo Division.

" Nov. 1. Bradford Water Works Company with Receiver. Agreement for supplying water at Bradford station.

1878. Jan. 1. Rochester & State Line Railroad Company, with Receiver. Agreement for crossing tracks of Erie Railway Company at Salamanca.
Order February 25, 1878.

" " 7. John Parsons and others, with Receiver. Lease of half of Pier 8, East River, N. Y.
Order April 14, 1877 (renewed leases).

" Feb. 2. Albany & Rensellaer Iron and Steel Company, with Receiver. Agreement for 7,500 tons Bessemer steel rails.

" " 2. Bethlehem Iron Company, with Receiver. Agreement for 7,500 tons Bessemer steel rails.

" Jan. 11. Pennsylvania Steel Co., with Receiver. Agreement for steel rails.

" Feb. 21. Nathalie E. Baylies and others, with Receiver. Lease of office, 529 Broadway, N. Y.

" " 6. Olean, Bradford & Warren R. R. Co., with Receiver. Receiver grants to said company the right and privilege of continuing and maintaining a passenger depot, water-tank, and its main and side tracks on the lands in the possession of the Receiver at Bradford Station, Pa.

" March 19. The Leighton Bridge & Iron Co., with Receiver. Constructing bridges on Easton and Susquehanna Divisions.

" Jan. 24. Samuel Wright, with Buffalo, New York & Erie R. R. Co. Leases certain lands in the town of Alexandria, Genesee Co., N. Y., for using the gravel therein.

" April. The Receiver of the Erie Ry. Co. (as lessee) agrees to assume and perform the obligations of said contract.

" Jan. 1. Receiver, with Reed, Carter & Walters. Agreement for transportation of live stock.

" " Lake Superior Transit Co., with Trunk Lines, including Erie Ry. Co. by Receiver. Agreement for pooling water freights.

" March 11. Cyrus H. McCormick, to the Receiver, &c. Lease of office in Chicago, Illinois, for one year.

SUPREME COURT OF THE STATE OF NEW YORK.

THE FARMERS' LOAN AND TRUST CO., Trustee, *Plaintiffs*, *vs.* THE ERIE RAILWAY COMPANY, and others, *Defendants.*

We, Edwin D. Morgan, J. Lowber Welsh and David A. Wells, trustees, acknowledge that we have become the purchasers of the franchises and the property of the Erie Railway Company, at the auction sale thereof, held in the city of New York, this twenty-fourth day of April, A. D. 1878; the said fran-

chises and property being described in the schedules and inventory exhibited at the sale, for the sum of six million dollars, being the amount bid by us at the sale aforesaid. And having paid to George Ticknor Curtis, Esq., the Referee appointed to sell the franchises and property aforesaid, the sum of seven hundred and twenty thousand dollars, being twelve per cent. of the said bid, we hereby undertake and promise to pay to the said Referee the residue of the said purchase money, according to the terms and conditions of the sale.

Done and delivered to the said Referee, in duplicate, at the city of New York, on this twenty-fourth day of April, A. D. 1878.

In presence of James H. Fay.

E. D. MORGAN,
JNO. LOWBER WELSH,
DAVID A. WELLS,
} *Trustees.*

City, County, and State of New York, ss.:

On this 24th day of April, A. D. 1878, personally appeared before me E. D. Morgan, Jno. Lowber Welsh, and David A. Wells, to me known to be the persons subscribing the aforesaid acknowledgment and undertaking, and severally acknowledged the same to be their act respectively.

JAMES H. FAY, *Notary Public*, N. Y. City.

SUPREME COURT OF THE STATE OF NEW YORK.

THE FARMERS' LOAN AND TRUST CO., Trustee,
Plaintiff,
vs.
THE ERIE RAILWAY COMPANY and others,
Defendants.

I, GEORGE TICKNOR CURTIS, Referee appointed to sell the franchises and property of the Erie Railway Company, under the judgment and decree of foreclosure and sale entered and signed on the 7th day of November, A. D. 1877, acknowledge to have received from Edwin D. Morgan, J. Lowber Welsh, and David A. Wells, Trustees, the sum of seven hundred and twenty thousand dollars, being twelve per cent. of the sum of six million dollars, which last-mentioned sum was bid by the said Edwin D. Morgan, J. Lowber Welsh, and David A. Wells, Trustees, at the auction sale of the premises this day, and was accepted by me as the highest sum bid for the franchises and property offered at the sale; and in consideration of the payment aforesaid, and of the undertaking and promise of the said Edwin D. Morgan, J. Lowber Welsh, and David A. Wells, Trustees, to pay the residue of the said purchase money according to the terms of sale, I hereby accept the said Edwin D. Morgan, J. Lowber Welsh, and David A. Wells, Trustees, as purchasers of the premises, to be reported as such for the confirmation of the Court.

Given under my hand this 24th day of April, A. D 1878.

GEO. TICKNOR CURTIS, *Referee.*

No. 11.

At a Special Term of the Supreme Court of the State of New York, held at the Court House, in the City and County of New York, on the 25th day of April, 1878.

Present—Hon. JOSEPH POTTER, *Justice.*

THE FARMERS' LOAN AND TRUST CO., Trustee, *Plaintiff,* *against* THE ERIE R'Y CO., J. H. BERTHOLD, *et al.*, *Defendants.*	*Order Confirming Report of Sale.*

George Ticknor Curtis, Esq., the Referee appointed in and by the decree of this Court, heretofore entered in this action, bearing date the 7th day of November, 1877, among other things, to sell the premises, franchises, and property in and by said decree directed to be sold, having made his report in writing to this Court, which report bears date the 25th day of April, 1878, in and by which report, among other things, it appears that said Referee, after due notice of said sale, made as required by law and the rules of this Court, proceeded to make sale of, and did sell the said premises, franchises, and property at public sale, at 12 o'clock noon, on the 24th day of April, 1878, at the Merchants' Exchange Sales Rooms, No. 111 Broadway, in the City of New York, on which sale all and every the said premises, franchises, and property in and by said decree directed to be sold were sold to Edwin D. Morgan, John Lowber Welsh and David A. Wells, Trustees, for the sum of six million dollars, they being the highest bidders, and that sum being the highest sum bidden therefor; and that the said purchasers have signed a memorandum of said sale, and have complied with all the terms thereof in as far as can or need be done prior to the delivery of the deed of the premises sold:

Now, on reading and filing said report of sale, and upon motion of Messrs. Turner, Lee & McClure, attorneys for the plaintiff, and the consent hereto annexed of Messrs. Shipman, Barlow, Larocque & Macfarland, attorneys for the defendant the Erie Railway Company, and of J. H. Henshaw, Esq., attorney for the only other defendants herein who have appeared herein and have not waived service of papers herein,

It is ordered, adjudged, and decreed, that the said report of said Referee, and the said sale made by him as therein reported, be, and the same hereby are in all things ratified and confirmed.

And it is further ordered, that the said Referee be, and he hereby is ordered and directed forthwith to execute and deliver a proper deed or deeds of conveyance of all and singular the said premises, franchises, and property so as aforesaid sold, or intended so to be, to the said purchasers or their assigns, on their complying with the conditions on which, by the terms of said sale and by said decree, such deed or deeds were to be delivered.

And it is further ordered, that said sale and the said deed or deeds of conveyance be valid and effectual for ever.

Endorsed April 25, 1878. (A copy.) HENRY A. GUMBLETON, *Clerk.*

No. 12.

Certificate of Incorporation of the New York, Lake Erie and Western Railroad Company.

Whereas, The Erie Railway Company was organized under certain acts of the Legislature of the State of New York, passed respectively the 4th day of April, A. D. 1860, and the 2d day of April, A. D. 1861.

And whereas, in certain judicial proceedings in the Supreme Court of the State of New York, being a suit in equity for the foreclosure of a mortgage, in which the Farmers' Loan and Trust Company were plaintiffs, and the said Erie Railway Company and others were defendants, a judgment and decree of foreclosure and sale of the franchises and property of said Erie Railway Company was rendered and entered on the 7th day of November, A. D. 1877.

And whereas, at a sale made on the 24th day of April, 1878, by virtue of and pursuant to said judgment and decree, the following described property, namely: all and singular the railways of the said company from and including Piermont, on the Hudson River, to and including the final terminus of the said railway on Lake Erie, and the railway known as the Newburg Branch, from Newburg to the main line; and also all that part of the railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York; and also all other railways belonging to the company in the States of New York, Pennsylvania, and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges, and rights of the said company, and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood, and supplies of every kind belonging or appertaining to the said company; and all tolls, income, issues and profits arising out of said property, and all rights to receive or recover the same; also all the estate, right, title and interest, terms and remainder of terms, franchises, privileges, and rights of action of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, by the Union Railroad Company, by the Buffalo, New York and Erie Railway Company, by the Buffalo, Bradford and Pittsburg Railroad Company, by the Rochester and Genesee Valley Railroad Company, and by the Long Dock Company; also all and singular the choses in action, stocks, bonds, book accounts, bills receivable and other evidences of indebtedness, leasehold estates, contracts and other property in the said judgment mentioned, except however as follows: (1.) A lease of the Atlantic & Great Western Railroad Company to the Erie Railway Company, bearing date July 6th, 1874. (2.) A contract between the Atlantic & Great Western Railroad Company of the first part, and the Erie Railway Company and others of the second part, bearing date May 6th, 1874. (3.) Another contract of same date between the Atlantic & Great Western Railroad Company of the first part, and the Erie Railway Company of the second part. (4.) A memorandum of agreement or lease, dated November 8th, 1871, between the Erie Railway of the first part, and Lauren C. Woodruff (lessee of the Erie & Genesee Valley Railroad Company) of the second part, to which said judgment and the inventory therein referred to reference is had for a more particular description of such property—was purchased by David A. Wells, Edwin D. Morgan and John L. Welsh, the purchasing committee or trustees under an express trust created and controlled by a plan and agreement entered into on the 14th day of December, 1877, by and between themselves and certain stockholders and creditors of said Erie Railway Company.

And whereas the said purchasers have associated with themselves the following named persons:

R. Suydam Grant,	Cortlandt Parker,	Theron R. Butler,
Solomon S. Guthrie,	Homer Ramsdell,	J. Fred. Pierson,
Hugh J. Jewett,	Samuel Sloan,	Jas. J. Goodwin,
John Taylor Johnston,	Henry G. Stebbins,	Wm. Walter Phelps.
Charles Dana,	George F. Talman,	

And the said associates desire to become a body politic and corporate, and as such to take, hold, and possess the title and property included in said sale.

Now, therefore, in conformity with the provisions of an act of the Legislature of the State of New York, entitled "An Act to facilitate the reorganization of railroads sold under mortgage, and providing for the formation of new companies in such cases," passed May 11th, 1874, and the act amending the same, passed June 2d, 1876;

We, the undersigned, purchasers as aforesaid, and our associates, do hereby certify—

First.—The name of the corporation hereby organized, pursuant to said acts, shall be The New York, Lake Erie, and Western Railroad Company.

Second.—The maximum amount of the capital stock of the corporation shall be eighty-six million five hundred and thirty-six thousand nine hundred dollars ($86,536,900), to be divided into 85,369 shares of Preferred Stock, of the nominal value of one hundred dollars each, entitling the holder to non-cumulative dividends at the rate of six per cent. per annum, in preference to the payment of any dividend on common stock, and 780,000 shares of common stock, of the nominal amount of one hundred dollars each.

Third.—The number of directors of the said corporation shall be seventeen.

Fourth.—The names and residences of the persons selected to act as directors, for the first year after its organization, are as follows:

R. Suydam Grant, New York City.
Solomon S. Guthrie, Buffalo, N. Y.
Theron R. Butler, New York City.
Hugh J. Jewett, New York City.
John Taylor Johnston, New York City.
Edwin D. Morgan, New York City.
David A. Wells, Conn.
Cortlandt Parker, Newark, N. Jersey.
Homer Ramsdell, Newburgh, N. Y.
Charles Dana, New York City.
Samuel Sloan, New York City.
Henry G. Stebbins, New York City.
Geo. F. Talman, New York City.
J. Lowber Welsh, Philadelphia, Penn.
J. Fred. Pierson, New York City.
Jas. J. Goodwin, New York City.
Wm. Walter Phelps, New Jersey.

Fifth.—In accordance with the provisions of a certain plan and agreement, which is hereinafter inserted, and is hereby made a part of this certificate, the power of voting in respect of one half of the preferred stock, and one half of the common stock to be issued by this corporation, shall be lodged with voting trustees, of whom Sir Edward William Watkin, Thomas Wilde Powell, Esq., and John Westlake, Esq., shall be the first. From time to time the voting trustees for the time being may fill any vacancy occurring in their body and may add to their number, and may exercise their power of voting by a proxy, appointed under the hands of a majority of them for the time being. This trust shall continue until the full dividend shall have been paid on the preferred stock for three consecutive years. The said half of the common and preferred stock respectively, shall be actually vested in and held by said trustees. The persons entitled to the stock subject to such trust shall receive as evidence of their equitable ownership thereof, and of the right to receive any dividends declared thereon, certificates in the ordinary form of share or stock certificates, or as near as may be thereto, and transferable in the manner usual for such certificates, but each bearing an endorsement, stating that such certificate does not give the holder a right to vote in respect of the shares represented by it, and that the same is subject to the voting trust aforesaid.

Sixth.—Holders of the bonds of the Erie Railway Company (the company foreclosed), and also holders of the bonds of the corporation hereby organized, shall have the right of voting at all elections for directors of the company, and at all general meetings of its stockholders; and shall be entitled to one vote for each one hundred dollars in nominal value of the bonds held by them respectively at a date thirty days previous to such election or general meeting.

Seventh.—The plan and agreement hereinbefore referred to, and made in anticipation of the re-adjustment of the respective interests of the mortgage creditors and stockholders of the Erie Railway Company in its property and franchises, is in the words and figures following:

Erie Railway Company.

Plan and Agreement for the foreclosure of a mortgage of the Erie Railway Company, known as the Second Consolidated Mortgage, executed and delivered to the Farmers' Loan and Trust Company, February 4th, 1874, and for the creation of a new corporation to succeed to all the franchises, rights, and privileges of the said Erie Company, and to take, hold, and possess the mortgaged premises after the foreclosure sales thereof: which plan and agreement is made under and in pursuance of the laws of the State of New York, and particularly an act entitled "An Act to facilitate the reorganization of railroads," passed May 11, 1874, and the Act amending the same, passed June 2, 1876.

Whereas, on the 1st day of September, 1870, the said Erie Railway Company executed and delivered to the Farmers' Loan and Trust Company of the City of New York, a deed of trust or mortgage of its line of railway, property, rights, privileges, and franchises, to secure the payment of certain bonds known as First Consolidated Mortgage bonds, and Sterling Loan bonds; *and whereas*, on the 4th day of February, 1874, the said Erie Railway Company executed and delivered to the said Farmers' Loan and Trust Company a certain other deed of trust or mortgage of the same premises to secure the payment of certain other bonds of the said Erie Railway Company therein mentioned, known as Second Consolidated Mortgage bonds, and Gold Convertible Bonds, all of which will fully and at large appear in and by the said deeds, reference thereto being had; *and whereas*, there have been issued fifteen million dollars of the Second Consolidated Mortgage, and ten million dollars of the Gold Convertible Bonds, making together twenty-five million dollars; *and whereas*, default having been made in the payment of interest, as well upon the bonds issued under and secured by the said first-mentioned mortgage, as upon the bonds issued under and secured by the said last mentioned mortgage, the said Farmers' Loan and Trust Company did, on or about the 15th day of June, 1875, commence an action in the Supreme Court of the State of New York, for a foreclosure of each of the said mortgages, and did shortly thereafter commence ancillary actions for the foreclosure of the same mortgages in the respective States of New Jersey and Pennsylvania, in which States, respectively, certain parts of the mortgaged premises are situate; in all of which actions the Hon. Hugh J. Jewett was appointed Receiver of the mortgaged premises, and is now such Receiver, and all of which actions are now pending and being prosecuted to final decrees of foreclosure and sale; *and whereas*, the bonds secured by the first above-mentioned mortgage are outstanding, with interest thereon from the 1st day of March, 1875, with the exception of the coupon falling due on the 1st day of September, 1876, belonging to such of the holders of the First Consolidated Mortgage Bonds as have agreed to fund certain of their coupons as hereinafter mentioned; *and whereas*, the bonds of the said Erie Railway Company secured by the secondly above mentioned mortgage are outstanding, with interest thereon, in the case of the Second Consolidated Mortgage Bonds, from the 1st day of December, 1874, and in that of the Gold Convertible Bonds from the 1st day of April, 1875; *and whereas*, upon careful consideration of the premises, it appears to be necessary to the protection and preservation of the just rights of the parties interested in the mortgaged premises that they should co-operate for the protection and preservation of their respective interests and the readjustment thereof upon a just and equitable basis, having due regard to priority of lien, and to the probable net earnings of the railroad property in question on the reorganization and improvement thereof, as contemplated.

Therefore it is agreed, by and between the undersigned, Oliver Gourlay Miller, Esq., Henry Rawson, Esq., John Kynaston Cross, Esq., M. P., John Westlake, Esq., Q. C., Peter McLagan, Esq., M. P., Benjamin Whitworth, Esq., M. P., Sir Edward William Watkin, M. P., and Thomas Wilde Powell, Esq. (holders of Common Stock of the Erie Railway Company, of Preferred Stock of the said company, of coupons of the said First Consolidated Mortgage and Sterling Loan Bonds, and of bonds and coupons of both the Second Consolidated Mortgage and Gold Convertible), parties of the first part, and Edwin D. Morgan, John Lowber Welsh, and David A. Wells, purchasing trustees or committee, parties of the second part, as follows, that is to say:

1. The parties of the first and second parts shall co-operate with The Farmers' Loan and Trust

Company in the prosecution of the several actions to final foreclosure and sale in the respective States under the said mortgage of the 4th day of February, 1874, and in all proceedings for that purpose.

2. At such foreclosure sale, or sales, the parties of the second part shall purchase (provided that a sufficient number of bonds and coupons, and such other means as may be necessary to make such purchase practicable, shall have been placed at their disposition), all and singular the property, rights and franchises sold at such sale, for the purposes of this agreement. The said parties may, in their discretion, with the consent of the parties of the first part, also acquire, by purchase or otherwise, any property of the Erie Railway Company not embraced in the mortgage foreclosed which they may deem to be useful to the new corporation.

3. The said parties of the second part shall pay for the property, rights and franchises so purchased, with the bonds and coupons of the parties of the first part, as far as may be, and such bonds and coupons will be placed at their disposition for that purpose, in the manner hereinafter specified.

4. For that part of the purchase money which may be payable in cash, for the expenses provided for by paragraph 27 of this Agreement, and for any sums necessary for the payment of any indebtedness of the receivership which it may be found necessary to discharge before a surrender of possession to the purchasers can be ordered by the Court, or for any other necessary payment, the parties of the second part may, and shall, on the request of the parties of the first part, make provision, by raising the required amounts, and charging the same upon the company to be created as hereinafter mentioned, and its property, as a charge thereon prior to any mortgage to be executed for the security of the bonds to be given for the bonds and coupons secured by the mortgage foreclosed, but subject to all antecedent liens not affected by the foreclosure; or the said parties of the first and second parts may use for such purpose any part of the funds contributed by holders of existing common and preferred stock; but if any such charge as authorized by this clause shall be created, provision shall be made, as far as practicable, for its being satisfied by the new company in such manner that no part thereof shall ultimately fall on the holders of its mortgage bonds.

5. The said parties of the second part, after they shall have purchased the said property, privileges, rights and franchises, shall organize, under such name as they may select, a company or corporation, in conformity with this plan and the laws of the State of New York in such case made and provided, with an amount of stock not exceeding the present amount of stock of the Erie Railway Company, and shall cause the corporation so created to succeed to the title and possession of all and singular the property, rights, privileges and franchises so purchased, subject to the obligations by this agreement created and imposed thereon or upon the said new corporation.

6. The said parties of the second part shall have and possess all the power and authority in the premises that may lawfully be conferred under the laws aforesaid upon agents or trustees for the purposes herein contemplated; and they are hereby empowered, in carrying into effect such purposes, to do all and everything that such agents or trustees are authorized by law to do in the premises, and their acts shall be binding on the new corporation; and the said new corporation shall have discretionary power to compromise, adjust and settle, at any time, in such way, and on such terms as may appear to be judicious, claims of or against the existing Erie Railway Company, in all cases in which it may appear to the said corporation to be expedient to make such compromise, adjustment and settlement.

7. The bonds and coupons of the parties of the first part shall be deposited in the City of New York, with or to the order of the parties of the second part, for the purpose of being used by them in carrying out this agreement. They shall be so deposited upon notice of their being required for the purposes of this agreement being given by the parties of the second part to the parties of the first part.

8. There are six mortgages upon the premises, or some of them, including the mortgage of September 1st, 1870, known as the First Consolidated Mortgage, subject to which six mortgages the foreclosure contemplated by this agreement will be had. As the bonds secured by any of such six mortgages fall due,

they may be extended without prejudice to the mortgage security, and new coupons issued. If that shall not be practicable or advisable, a new mortgage or new mortgages may be made of the same standing in point of lien, or as nearly so as lawfully may be, in order to raise money to pay such bonds as they fall due; and all other mortgages made in pursuance of this agreement shall be made subject to the right above reserved. Provided always that nothing in this agreement contained shall be construed to affect or impair the provisions of the First Consolidated Mortgage in regard to the bonds issued thereunder, and deposited with the Farmers' Loan and Trust Company for the purpose of being exchanged for prior lien bonds; but such provision shall be and remain operative and in full force and effect, according to the true intent and meaning of the said mortgage.

9. As the consideration for the property, rights, and franchises so to be purchased, possessed and enjoyed as aforesaid, the corporation to be created by the parties of the second part shall, in addition to assuming and satisfying such obligations as may lawfully be imposed by the parties of the second part, in carrying the trusts and objects of this agreement into effect, and with all convenient speed, create and deliver the obligations and stock mentioned in paragraphs 10, 11, 12, 13, 14 and 15 hereof.

10. Funded Coupon Bonds, each for such amount as the parties of the first part may direct, to an amount in the aggregate equal to that of the coupons of the First Consolidated Mortgage Bonds to be funded by the parties of the first part, namely, those due September 1, 1875; March 1, 1876; March 1, 1877; September 1, 1877; September 1, 1878; and September 1, 1879, together with interest on such coupons, at the rate of seven per cent. per annum, to the date of such funded coupon bonds, to be calculated on all the said coupons as from the 1st of September, 1877 (that being about the mean date), whatever their due date. These bonds shall be payable in London and New York, in gold, on the 1st day of September, 1920, and shall bear interest at the rate of seven per cent. per annum, payable in gold, semi-annually, in London and New York, to be represented by coupons attached to each bond; and they shall be secured by a deposit with the Farmers' Loan & Trust Company of the funded coupons uncancelled; and the parties of the first part so funding coupons shall be entitled to receive therefor such funded coupon bonds. The so-called Sterling Loan Bonds of the parties of the first part shall be regarded for the purposes of this paragraph as having been exchanged for First Consolidated Mortgage Bonds, on the 1st day of September, 1875, the coupon due on that day being funded at the rate of six per cent. per annum, as it in fact stood previous to such assumed exchange.

11. Mortgage Bonds to be delivered to the parties of the first part, to an amount equal to the amount of the principal of the Second Consolidated and Gold Convertible Bonds, secured by the said mortgage of February 4th, 1874, which may be held by the parties of the first part, or which (after having been held by them) may have been lost, stolen or destroyed in transit from them to the parties of the second part, or otherwise. These bonds shall be for the sum of one thousand dollars gold, or two hundred pounds sterling each, or for such other amounts and denominations as the parties of the first part may direct, payable in gold coin in London and New York, on the 1st day of December, 1969, with interest from the 1st day of December, 1879, at six per cent., payable semi-annually in gold, in London and New York, to be represented by coupons attached to each bond.

12. Funded Coupon Bonds to be delivered to the parties of the first part (each for such amount as they may direct) equal in the aggregate to the amount of the interest coupons due on the bonds secured and held or lost, stolen or destroyed, as mentioned in the last preceding paragraph, up to and including the said 1st day of December, 1879, together with interest on such coupons at the rate of seven per cent. per annum, to the date of the Funded Coupon Bonds, to be calculated upon all the said coupons as from the 1st day of December, 1877 (that being about the mean date), whatever their due date. The said Funded Coupon Bonds to bear interest at the rate of five per cent. per annum, from the date of their issue to the 1st day of June, 1883, and thereafter at the rate of six per cent., but always payable semi-annually, in London and New York, in gold, and to be represented by coupons to be attached to each bond; and the principal of such coupon bonds shall be payable on the 1st day of December, 1969, in London and New York, in gold.

13. Preferred Stock to an amount equal to the Preferred Stock of the Erie Railway Company now outstanding, to wit: Eighty-five thousand three hundred and sixty-nine shares, of the nominal amount of one hundred dollars each, entitling the holders to non-cumulative dividends at the rate of 6 per cent. per annum, in preference to the payment of any dividend on the Common Stock, but dependent on the profits of each particular year, as declared by the Board of Directors.

14. Common Stock to an amount equal to the amount of the Common Stock of the said company now outstanding, to wit: Seven hundred and eighty thousand shares, of the nominal amount of one hundred dollars each.

15. The new company, at the request of the parties of the first part, shall, at the time of the creation of the Mortgage and Funded Coupon Bonds mentioned in paragraphs 11 and 12, create a further amount of the same bonds respectively, not exceeding that which would correspond to so many of the twenty-five million dollars Second Consolidated and Gold Convertible Bonds, as are not referred to and comprised in the said paragraphs, and the coupons thereon, and shall dispose of the same, or the proceeds thereof, as the parties of the first and second parts shall jointly direct.

16. The bonds stipulated for in paragraphs 11, 12, and 15, shall be secured, *pari passu*, by a mortgage embracing all and every part of the property, rights, privileges, and franchises of the said new company, as well acquired as to be acquired, but subject to all prior mortgages or liens.

17. The last-mentioned mortgage, and the bonds secured by it, shall contain a provision that in case any failure to pay interest on such bonds shall result from the want of net earnings applicable to such payment, the right of action consequent on such failure, whether at law upon the bonds or in equity for a foreclosure, shall be suspended until on each of six successive due dates of coupons some interest secured by the said mortgage shall be in default and unpaid; also, that under no circumstances shall a decree for foreclosure of the said mortgage be made unless the court shall be satisfied that the holders of at least one-half of the bonds secured by the said mortgage concur in or approve of the application for such decree. The said mortgage shall further contain provisions that in case the net earnings of the company applicable for the purpose shall be at any time insufficient to pay interest on the bonds secured thereby in full as it matures, but sufficient to pay a part thereof, such part shall be paid *pro rata* in such manner as may appear to the company to be most convenient and desirable; also, that in the event of any default in the payment of interest in full, then and thereafter, during the continuance of such default, a full and just account of the receipts, income, expenses, and net earnings of the company, shall be open to the inspection of the trustee or trustees of the said mortgage at all reasonable times.

18. Preferred stock of the old company in respect of which three dollars gold for each share has been or may be paid, and common stock of the old company in respect of which six dollars gold per share has been or may be paid, may be exchanged for the new stock in paragraphs 13 and 14 mentioned, share per share, preferred for preferred, and common for common, without any liability to make any further payment in respect of such new stock. *Provided, however*, that such new stock, whether common or preferred, shall be issued and held in conformity with and subject to the trust for voting hereinafter mentioned.

19. In addition to the new common and preferred stock, the parties of the first part shall also receive for the amount of such payments as mentioned in the last preceding paragraph, non-cumulative income bonds, without mortgage security, payable in gold, in London and New York, on the first day of June, 1977, and bearing interest from December 1st, 1879, also payable in gold, in London and New York, at the rate of six per cent. per annum, or at such lesser rate for any fiscal year as the net earnings of the company for that year as declared by the Board of Directors, and applicable for the purpose, shall be sufficient to satisfy. These bonds to have yearly coupons attached.

20. Preferred stock in respect of which two dollars gold per share has been or may be paid, and common stock in respect of which four dollars gold has been or may be paid, may be exchanged share for share, but in conformity with and subject to the said trust for voting, for new stock of like class, without

any liability to make any further payment in respect of such new stock; but no income bonds, or other obligation or security, shall be issued or delivered in respect of such reduced payments.

21. Payments in respect of old preferred or common stock at the rates and on the terms hereinbefore specified, so far as not yet made, may be made to the Farmers' Loan and Trust Company of the City of New York, or to the parties of the first part, in London, by any holders of such stock, before the expiration of such time as may be lawfully limited by the parties of either of the first or of the second part, but with interest on the sums so to be paid in each case, calculated at the rate of seven per cent. per annum from the first day of March, 1877, to the time of payment; and all payments made, or to be made, in respect of old preferred or common stock, shall be deemed to be in consideration of the concessions and agreements made by the holders of the said First and Second Consolidated Mortgage and Gold Convertible Bonds, the available funds resulting from such concessions being used for the improvement or increase of the property of the new company.

22. The stock of the new company, both common and preferred, not required for exchange as above Provided, may, with the consent of the parties of the first part, but not otherwise, be issued and disposed of by the company for its own benefit, at such rates and upon such terms as to the said company may seem proper. All moneys which have been, or may hereafter be paid, in respect of stock as above set forth, and which shall not be required for the purpose of carrying into execution this plan and agreement, shall be expended for the benefit of the said new company, or in the improvement or increase of its property, under the direction of the parties of the first part, and any balance not so expended shall be paid over to the said new company.

23. Vouchers exchangeable in suitable amounts for bonds to be issued under this agreement shall be given in all cases for fractions for which bonds cannot conveniently be given, and in all payments which under this agreement are to be made in New York and London in gold, 4s. sterling shall be taken as the equivalent of one dollar gold, except any payments under paragraphs 18, 20 and 21, which when made in sterling shall be reckoned at 4s. 1d. per dollar gold.

24. The parties of the second part shall cause the bonds and shares created and issued under this agreement to be transmitted to the parties of the first part, in London, in such manner as the last mentioned parties may direct; and upon the delivery of the same, pursuant to such direction, to the post office, person, or corporation who may undertake the carriage thereof, the parties of the second part shall thereafter be freed and discharged of and from all liability in respect of the same.

25. The parties of the first and second parts, under advice of counsel, shall create a trust for placing in trustees, to be named by the parties of the first part, the power of voting in respect of one-half the common and preferred stock of the corporation to be created under this agreement and issued for the time being, the provisions of which trust shall be inserted in the certificate or articles of incorporation of the company, and constitute part thereof. Such trust shall continue until the full dividend has been paid of the preferred stock for three consecutive years, and in order the more effectually to secure such voting power to the said Voting Trustees, the said half of the said common and preferred stock respectively shall be actually vested in and held by them. And they shall from time to time issue to the persons entitled to the stock subjected to such trusts, certificates representing the stock to which such persons respectively may be so entitled, and such certificates may be in such form as to permit of the same, together with the equitable right to the shares represented thereby, being transferred by delivery of such certificates, or in such form as to permit of the same certificates and equitable right being transferred in the same way as ordinary shares in the company, or in any other form which the Voting Trustees and the parties hereto of the first part may approve. And the Voting Trustees shall, so far as practicable, having regard to the form of certificate issued, keep in London and New York a register of the transfers and holders of such certificates, and the expenses of conducting such voting trust, including the remuneration of the Voting Trustees, shall be borne and paid by the company. The certificate, or articles of incorporation, shall also contain proper provisions for voting on the part of the holders of

bonds of the new corporation, and holders of the said First Consolidated Sterling Loan, and other mortgage bonds of the Erie Railway Company.

26. The several persons, parties to this agreement, shall be liable only for gross negligence or wilful default, and shall, under no circumstances, be liable, except each for his own personal acts. If a vacancy shall occur, from any cause whatever, in the body constituting the party of the first part, the persons remaining may fill the vacancy. If such vacancy shall occur in the body constituting the party of the second part, the person or persons remaining may fill the vacancy, with the concurrence of the parties of the first part, but shall not be obliged to do so while two remain to execute the trust. In both cases those who may be appointed successors, and shall accept the appointment, shall immediately, and without further act, succeed to all the rights and duties of the person or persons whom they succeed; and the parties, either of the first or of the second part, may, in all cases, act by a majority of their respective number, whether such parties be acting hereunder alone or in conjunction with the parties of the other part. And this agreement may be executed by a majority of the parties of the first part on behalf of themselves and the others of them.

27. The expenses (including all proper compensation for services or otherwise) of or incident to the carrying out of this agreement, and the negotiations and arrangements preliminary thereto, shall be assessed and determined by the parties of the first part, whose decision thereon shall be final, except as to the remuneration to be paid to the parties of the second part, called the Purchasing Committee, which shall be settled between themselves and the parties of the first part, and except also as to the remuneration to be paid to the committee who prepared the scheme of reconstruction on which this plan is found, and to the parties of the first part, called the Reconstruction Trustees, which shall be fixed by a meeting in London of the holders of, or persons entitled to, the stock and bonds of the Erie Railway Company affected by this scheme, or the stock and bonds to be issued hereunder in lieu thereof respectively, to be convened and held as nearly as possible in the same manner as the meetings by which such committee and trustees were respectively appointed, or by any committee or delegation appointed by such meeting.

28. Nothing herein contained shall be, or be construed to be, any limitation on the right or authority of the parties of the second part to discharge their duty as Purchasing Trustees or Committee, or as the persons organizing the new company in the manner and for the purposes contemplated by the acts hereinbefore referred to.

Dated 14th day of December, 1877.

(Signed),	E. W. WATKIN,	PETER MCLAGAN,
	BENJ'N WHITWORTH,	HENRY RAWSON,
	JOHN WESTLAKE,	T. W. POWELL,
	O. G. MILLER,	JOHN K. CROSS.
(Signed),	EDWIN D. MORGAN,	DAVID A. WELLS.
	JOHN LOWBER WELSH,	

In witness whereof, we the undersigned, being the said Purchasing Trustees and their associates, have hereunto severally subscribed our names and affixed our seals, at the City of New York, this, twenty-sixth day of April, A. D. eighteen hundred and seventy-eight.

In presence of H. S. ANDERSON, JAMES E. BEDELL.	E. D. MORGAN.	[Seal.]	T. R. BUTLER,	[Seal.]
	JNO. LOWBER WELSH.	[Seal.]	J. FRED. PIERSON.	[Seal.]
	DAVID A. WELLS.	[Seal.]	HOMER RAMSDELL.	[Seal.]
	H. J. JEWETT.	[Seal.]	JAMES J. GOODWIN.	[Seal.]
	SOLOMON S. GUTHRIE.	[Seal.]	WM. WALTER PHELPS.	[Seal.]
	R. SUYDAM GRANT.	[Seal.]	SAM. SLOAN.	[Seal.]
	GEO. F. TALMAN.	[Seal.]	HENRY G. STEBBINS.	[Seal.]
	JOHN TAYLOR JOHNSTON.	[Seal.]	CHARLES DANA.	[Seal.]
	CORTLANDT PARKER.	[Seal.]		

(Duly acknowledged, &c.)

STATE OF NEW YORK, } ss.
Office of the Secretary of State,

I have compared the preceding with the original Certificate of Incorporation of the New York, Lake Erie and Western Railroad Company, with acknowledgment thereto annexed, filed in this office on the 27th day of April, 1878, and do hereby certify the same to be a correct transcript therefrom, and of the whole of the said original.

Witness my hand and the seal of the Secretary of State, at the City of Albany, this twenty-seventh day of April, one thousand eight hundred and seventy-eight.

[SEAL.] GEO. MOSS, *Deputy Secretary of State.*

No. 13.

N. Y. SUPREME COURT.

THE FARMERS' LOAN AND TRUST CO., Trustee, *vs.* THE ERIE RY. CO. *et al.*	*Pet. and Order, Transfer Property to New Co.*

Your petitioner respectfully represents:

First.—That prior to the 25th day of May, 1875, an action had been commenced by and in the name of The People of the State of New York, by the Attorney-General of the State, against the Erie Railway Company, and others, which action was pending at the date last aforesaid. That on the said 26th day of May, in pursuance of an order of this Court, the summons and complaint in the said action were amended, and by an order of this Court of the same date, your petitioner was duly appointed Receiver in the said action, which appointment he accepted, and having duly qualified as required by law and the provisions of the said order, he entered upon the performance of his duties as such Receiver on or about the day last aforesaid, and has since continued to be Receiver in the said action, which is still pending.

Your petitioner prays that reference may be had to the pleadings and proceedings in the said action to the same extent, and with like effect, as though the same were herein set out at length.

Second.—That the complaint in the aforesaid action in the name of the People of the State of New York, while not charging actual fraud against The Erie Railway Company, its Board of Directors or officers, was and is founded upon charges of management and proceedings *ultra vires*, which are alleged to constitute ground for the forfeiture of the charter of the company.

It was and is alleged that the company was insolvent; that default in the payment of the interest upon its mortgage debt was imminent, and that the company was subject to such other embarrassments and surrounded by such perils and dangers to its property and franchises as to call for the appointment of a Receiver thereof, and for the ultimate dissolution and winding up of its affairs in the said action.

The Attorney-General, therefore, among other things, prayed that the said corporation might be dissolved and its affairs wound up; and that in the meantime a Receiver of its property and franchises might be appointed.

An application for the appointment of a Receiver having been duly made in this action, and having come on to be heard on the said 26th day of May, 1875, in pursuance of such application, your petitioner, as hereinbefore stated, was by an order then made, appointed, and duly entered upon his duties as Receiver of all and singular the said property and franchises. The said action is still pending, and, as before stated, your petitioner still continues to be Receiver therein.

Third.—On the 1st day of September, 1870, the Erie Railway Company executed and delivered to

the Farmers' Loan and Trust Company, as trustee, a mortgage to secure a proposed issue of bonds, to which mortgage reference is had; and a large amount of bonds under this mortgage, to wit, bonds to the amount of about $16,650,000, were issued, and were outstanding at the several times hereinafter mentioned. Afterwards, on the 4th day of February, 1874, the said Erie Railway Company executed and delivered another and further deed of mortgage to the said Farmers' Loan & Trust Company, in trust, to secure a proposed issue of bonds to a large amount, whereof at the several times hereinafter mentioned there had been issued and were outstanding bonds to the amount of $24,400,000.

Fourth.—On the 1st of June, 1875, interest became due and payable on the bonds secured by the said last-mentioned mortgage of the Erie Railway Company to the Farmers' Loan & Trust Company, to the amount of about $553,190.40, which the said company was then unable to pay and refused to pay.

On the same day interest to the amount of about $24,832.50 became due and payable on the bond secured by a certain mortgage of the property and franchises of the Erie Railway Company theretofore made by the New York & Erie Railroad Company (to whose property and franchises the Erie Railway Company succeeded), known as the fifth mortgage, under which there were then outstanding bonds in the aggregate to the amount of about $709,500. Thereupon, and on or about the 14th day of June, 1875, the said Farmers' Loan and Trust Company brought an action in this Court for the foreclosure of the said mortgage of February 4th, 1874, and on special allegations of danger to the mortgaged security, and so forth, also prayed for the foreclosure of the said mortgage of the 1st of September, 1870; and the plaintiff also prayed for the appointment of a Receiver of the mortgaged property and franchises *pendente lite*. This application for the appointment of a Receiver having come on to be heard on the 15th day of June, 1875, and having been heard, the application was granted, and an order was then duly made and entered appointing your petitioner Receiver in said action.

Your petitioner prays that reference may be had to the complaint, orders and proceedings in the said action made and had from time to time during the pendency thereof, to the same extent, and with like effect, as if the same were herein set forth at large.

Fifth.—Default having also been made by the Erie Railway Company in the payment of the interest due on the said 1st day of June, 1875, on bonds secured by the said so-called fifth mortgage, whereof J. C. Bancroft Davis was trustee, an action was commenced against the said Erie Railway Company, and others, by the said J. C. Bancroft Davis, on or about the said 14th day of June, 1875, in which the plaintiff, among other things, prayed for the appointment of a Receiver under the said so-called fifth mortgage.

This application also coming on to be heard on the 15th day of June, was granted, and by an order duly made therein, on the said last-mentioned day, your petitioner was also duly appointed Receiver in the said last-mentioned action. Your petitioner prays that the complaint, orders and proceedings in this action may also be referred to, to the same extent, and with like effect as if the same were herein at large set forth; but in this behalf your petitioner says that the said action has been, or is about to be, discontinued, and by order of this Court your petitioner has been, and is about to be, discharged of and from his Receivership therein, and of all liability incident thereto; and your petitioner is therefore advised that further reference to the said action will not be needful in this his petition.

Sixth.—In and by the said order of June 15th, 1875, appointing your petitioner Receiver in the said action of the Farmers' Loan and Trust Company against the Erie Railway Company and others, among other things it was and is provided as follows:

"And it appearing to the Court that the duties of the Receiver must be so complicated, and his payments must be so numerous and intricate, and so difficult to be explained after the elapsing of a considerable time, when some of his agents may have left, and that a prompt judgment of the Court thereon is expedient and just to said Receiver, and to the parties in interest, it is further ordered:

"(1.) That James C. Spencer, Esq., Counsellor-at-Law, be and he is hereby appointed a Referee,

to pass, decide and report upon the accounts and vouchers and doings of the Receiver which may be rendered to be passed before him, and to take testimony and report upon any other question or matter which under this order may be brought before such Referee.

"(2.) That in case of any question or matter within the authority of the Receiver under this order to decide or take action upon, as to which he shall desire information under oath, he may offer to have the same referred to said Referee; and in case the other parties in interest shall so consent, testimony may be taken before such Referee, who may report the facts with his views to the Receiver, who may use any testimony so taken and such report in making his decision, but the views of such Referee and such report shall in no way bind such Receiver.

"(3.) Said Receiver may, at any time, and from time to time, on eight days' notice to the parties hereto, or such less notice as may be accepted, of an intention so to do, present his accounts and vouchers for any particular period not less than one month, to be in the notice mentioned, to such Referee, at a time and place to be in said notice stated, for examination, adjustment and allowance, and said Referee shall proceed in their examination, and in regard to proof affecting their correctness, according to the practice in cases of other similar accounts. And he shall proceed with all despatch consistent with giving those objecting a fair opportunity to be heard.

"All objections to such accounts shall be made before such Referee in writing, with reasonable precision, and within such reasonable time as the Referee shall fix, and shall in a general way state the grounds of the objection to any item.

"After hearing the parties, any proper evidence offered, and the Receiver's answer to any objections, the Referee shall speedily report to this Court the facts proved, and his opinion as to the items disputed, and any party so objecting to such amount may take exceptions in writing to any portion (referring to items so objected to) of said report, and he shall state the grounds of his exception. Unless in special cases where, in the opinion of the Referee, an original voucher ought to be brought before this Court, the original vouchers and papers may be returned to the Receiver for his protection, and only copies of those disputed may be attached to the report; but the report shall clearly show the period covered by such accounting.

"(4.) And all vouchers and payments not so in writing objected and excepted to, as well as all the actions of said Receiver so brought before said Referee, and not disputed there, and the decision and report of said Referee, so far as not excepted to by any party, or by the Receiver, shall be deemed final and conclusive upon all parties, and upon the Receiver; and such accounts, vouchers, and payments shall not be liable to be again called in question.

"The Receiver is at liberty at any time to apply to this Court for further instructions and authority in and about the discharge of his duty."

Under and in pursuance of this order, your petitioner did, from time to time, and once in each month thereafter, proceed to render his accounts and vouchers, with an account of his doings, before and to the said Referee, who, upon due notice to the attorneys for the respective parties to the said action, did proceed from time to time to pass, decide, and report upon the said accounts, vouchers, and doings of your petitioner. And the said Referee did from time to time make his reports in the premises to this Court, which said reports and each of the same were, upon consideration thereof, duly passed and approved by this Court, and duly filed therein. The reports so made and rendered by the said Referee included the accounts and doings of your petitioner to and including the month of February last past.

Seventh.—After the appointment of your petitioner as Receiver in the said last-mentioned action, it was made to appear to the Attorney-General, as your petitioner is informed and believes, upon due enquiry into the premises by him, that, as the result of your petitioner's administration as Receiver, there could not possibly be any surplus for distribution in the action so brought by him in the name of the People of the State of New York, inasmuch as the current net revenues of the

property would not enable your petitioner to make good the default in the payment of interest upon the mortgage debt, much less to satisfy the principal of the mortgages under foreclosure, or either of them. It was also made to appear to the Attorney-General, as your petitioner is informed and believes, that while there might be property, or interests in property, to a certain and limited extent, in the possession of the Erie Railway Company not embraced within the mortgages to the Farmers' Loan and Trust Company before referred to, nevertheless, if any such property or interests there were, they were manifestly so connected with and united to the franchises of the Erie Railway Company and the mortgaged premises, that any severance thereof for the purpose of the Receivership, or for the purpose of separate account, would be utterly impracticable in the then existing state of affairs, and that an enquiry in this behalf ought, therefore, to be deferred until the contemplated foreclosure and reorganization had advanced to such a stage that such enquiry could be made efficiently, and without prejudice to the interests of either party, and with a view to the speedy winding-up of the affairs of the Erie Railway Company, and its dissolution.

These considerations induced the Attorney-General, in conference with the attorneys of the Erie Railway Company and of your petitioner, to waive an accounting in the aforesaid action of the People, as involving extra and unnecessary labor and expense, without the possibility of beneficial results therefrom, inasmuch as the mortgagees, for the reasons before stated, were alone interested in the pecuniary results of your petitioner's Receivership, and were bound by duty and by interest to see that his accounts, acts, and doings were properly rendered, taken, and reported.

Your petitioner, being notified of these views of the Attorney-General, and of his waiver, and acting under the advice of his counsel, did not, therefore, proceed to render his accounts in the said action of the People; but every item of receipts and disbursements, from the date of the appointment of your petitioner as Receiver in the said action of the People to and including his account for the said month of February last past, duly approved by this Court and on file, has been duly accounted for before the said Referee, James C. Spencer, Esq., in the said action of the Farmers' Loan and Trust Company for foreclosure, as hereinbefore stated.

Eighth.—Such proceedings were afterwards had in the said action of the Farmers' Loan and Trust Company, that afterwards, to wit, on or about the 24th day of September, 1877, the summons and complaint therein were amended, and afterwards such further proceedings were had that on or about the 7th day of November, 1877, a judgment for the foreclosure and sale of the mortgaged premises was duly rendered and entered therein.

Afterwards, and in pursuance of said judgment, on the 24th day of April last, all and singular the mortgaged premises were sold as therein directed, by George Ticknor Curtis, Esq., Referee, and on such sale the same and every part thereof were purchased by Messrs. Edwin D. Morgan, John Lowber Welsh, and David A. Wells, acting in the premises as trustees, at and for the price and sum of six million dollars, being more than twenty million dollars less than the mortgage debt and interest.

Afterwards, on the 25th day of April aforesaid, the said Referee duly made his report of said sale to this Court, which was on the same day duly confirmed by an order of this Court. After such confirmation, and on the 26th day of April aforesaid, the said Referee, in pursuance of the authority and direction of this Court, did execute and deliver his deed conveying the premises and every part thereof to the aforesaid purchasers, and on the same day, in pursuance of the direction contained in the said judgment, the said Erie Railway Company did also execute and deliver a deed of conveyance to the said purchasers in confirmation.

Afterwards, and in pursuance of the statute of this State in such case made and provided, to wit, Chapter 446 of the Laws of 1876, the said purchasers did associate with themselves certain other persons making, with said purchasers, seventeen in number; and thereupon the said purchasers and their said associates did on the same day make, duly execute and acknowledge, under their hands and seals, a certificate of incorporation, which certificate of incorporation was afterwards, to wit, on the 27th day of April

aforesaid, duly filed in the office of the Secretary of State for this State, as required by law, and thereupon said purchasers and their associates did become, under and by virtue of the laws of this State, a body politic and corporate, under the name of the New York, Lake Erie and Western Railroad Company, and thereupon the said corporation did adopt a corporate and common seal. Afterwards, and on the same 27th day of April aforesaid, the said corporation having been so created as aforesaid and having duly organized, the said purchasers, Messrs. Morgan, Welsh and Wells, did execute under their hands and seals, acknowledge and deliver to the said corporation, The New York, Lake Erie and Western Railroad Company, a deed of all and singular the said premises so as aforesaid conveyed to them by the said Referee, George Ticknor Curtis, Esq. Your petitioner craves leave to refer to the said several deeds of conveyance, duly recorded, and the said certificate of organization, duly filed, to the same extent and with like effect as though the same were herein set forth at large.

Ninth.—The said The New York, Lake Erie & Western Railroad Company, by virtue of the said judgment of foreclosure and the sale thereunder, and of the several deeds of conveyance, now claims to be entitled to have and receive from your petitioner, as such Receiver as aforesaid, the possession of all the property and franchises embraced in the said judgment, and the several deeds of conveyance, which property and franchises embrace and include all the property and franchises of every kind and description now in the possession of your petitioner as Receiver in both of the actions aforesaid, to wit: the action of the People of the State of New York against The Erie Railway Company, and the action of the Farmers' Loan and Trust Company against the Erie Railway Company.

The said corporation, The New York, Lake Erie & Western Railroad Company, as your petitioner is informed and believes, is willing to receive from him such delivery and transfer expressly subject to any and all rights which the Attorney-General, representing the People of the State of New York, may have in the premises, and subject to any examination, enquiry or accounting as between that corporation and the People which the Attorney-General may deem to be proper and necessary for the purpose of definitively ascertaining and adjusting their respective rights in and to the premises.

Your petitioner is able to state, from his own actual knowledge of the situation, that the rights of the Attorney-General and of the People of the State of New York, cannot and will not be prejudiced by such transfer of possession, and that such rights as between the parties respectively can be ascertained, established, settled and adjusted with the same efficiency as the same might be done if the actual custody and possession of the said property remained with your petitioner.

As your petitioner has before stated, there cannot with propriety be any ascertainment or severance of these respective rights, the adjustment of which must depend altogether upon an accounting, which may occupy a considerable time, and it would expose the said company to great and unnecessary inconvenience, loss and damage to be deprived of the possession and management of its railroad, property and franchises in the meantime, without any adequate advantage, or indeed any benefit whatever, to the intests represented by the Attorney-General.

Moreover, your petitioner is anxious to be relieved of the burthens of the said Receivership, which are very great and onerous, as speedily as may be, and it is essential to the interests of the said corporation, which has become the owner of the property and franchises in question, that it should speedily obtain the possession, control and management thereof.

Tenth.—There are, however, certain important considerations connected with the proposed transfer which your petitioner begs leave to lay before the Court. They are as follows:

The judgment of foreclosure requires the purchasers at the foreclosure sale, or their successors, upon receiving a surrender of the premises from your petitioner, to indemnify your petitioner against all and singular his unadjusted, unsettled liabilities as Receiver. This the said New York, Lake Erie & Western Railroad Company, in and by the deed of conveyance under which it obtains title to the premises, has undertaken to do in a very large and ample manner, and to the satisfaction of your petitioner.

There is, however, an outstanding indebtedness of the Receiver, lawfully contracted by your petitioner

as Receiver, and represented by your petitioner's certificates in that capacity. This indebtedness at the present time amounts to about the sum of $1,083,783.95.

The several persons to whom such certificates were issued, and by whom they are now held, received the same upon the credit of your petitioner as Receiver, and with the knowledge that the same must be paid in priority out of the mortgaged property; and although the said New York, Lake Erie & Western Railroad Company has assumed all such indebtedness, and is able and willing to pay and discharge, or provide for the same from time to time, as it matures, as your petitioner is informed and believes, yet your petitioner contemplates that the aforesaid creditors of the Receivership, or some of them, may be unwilling to discharge petitioner from his obligation in the premises, and look alone to the said corporation for payment. The said corporation having so recently come into existence, and not as yet having had time to put its affairs in order and establish normal and proper business relations, your petitioner contemplates that in fact it would be better for both the said corporation and the said creditors that your petitioner should retain sufficient power and authority to provide for the discharge, satisfaction or gradual transfer of such indebtedness, and to that end it will be necessary for your petitioner to retain that limited and qualified degree of control and administration necessary to enable him to do so; and your petitioner is able to state that the said New York, Lake Erie & Western Railroad Company does not object to his so doing.

It is also needful, and recognized by said corporation to be needful, that your petitioner's power and authority as Receiver should continue for the purpose of doing all things that may be necessary to enable him to wind up his accounts, and for this purpose it would be necessary that he should retain such authority as he may find it needful to exercise for the adjustment of all outstanding and unsettled claims and demands, of every form and kind, of or against the Receivership.

Your petitioner is also plaintiff and defendant in several actions brought by and against your petitioner as Receiver, and is likewise conducting the defence and prosecution of several actions in which The Erie Railway Company is either plaintiff or defendant.

It is necessary to the protection of the interests of all parties in interest, and is recognized by the said company to be so necessary, that your petitioner should remain Receiver, with full power and authority to do and perform whatever may be needful and proper in the defence and prosecution of such actions.

Your petitioner therefore prays, the premises considered:

First.—That all his accounts, acts and doings as Receiver in the actions aforesaid, heretofore reported by the said Referee to this Court and confirmed, may stand confirmed as adjusted, settled, and final accounts in the premises, subject to any special accounting that may have heretofore been ordered, but not as yet been had.

Second.—That if, on due consideration of the premises, the Court shall be of opinion that it is safe, proper and judicious for your petitioner so to do, your petitioner may be authorized and directed to transfer, surrender and deliver to the said New York, Lake Erie and Western Railroad Company, all the property and franchises in his hands and under his control as Receiver, subject to the following exceptions and reservations:

(1.) Subject to all and singular the rights of the People of this State in and to the premises or any part thereof, as the same may be ascertained on due inquiry and examination on the part of the Attorney-General in the action of The People of the State of New York against The Erie Railway Company, hereinbefore referred to.

(2.) Subject to the right of your petitioner to reserve and exercise all needful power and authority as Receiver to pay, satisfy, discharge or adjust any and all outstanding indebtedness of his Receivership, or any renewals of such indebtedness, or any part thereof, and subject to the retention and exercise by your petitioner of his powers and authority as Receiver for the purpose of prosecuting or defending any and all of the actions hereinbefore referred to, and of settling and adjusting any and

all outstanding accounts in favor of or against your petitioner, as Receiver, and all power and authority needful for the purpose of adjusting all the transactions of your petitioner, as Receiver, and the rendition of his final account herein.

Third.—And for such other and further relief and order in the premises as, on due consideration thereof, may appear to the Court to be just and equitable. H. J. JEWETT, *Receiver.*

SHIPMAN, BARLOW, LAROCQUE & MCFARLAND,

Attorneys for Petitioner, 35 William Street, New York.

City and County of New York, ss. :

HUGH J. JEWETT, being duly sworn, deposes and says : That he is the petitioner named in the foregoing petition ; that the said petition is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes the same to be true.

Sworn to before me, this 3d day of May, 1878. } H. J. JEWETT.

C. G. BARBER, *Notary Public*, N. Y. Co.

(Title of Action.)

At a Special Term of the Supreme Court of the State of New York, held at the Court House in the City of New York, on the 3d day of May, 1878.

Present—Hon. CHAS. DONOHUE, *Justice.*

The annexed and foregoing petition of Hugh J. Jewett, Receiver in the above-entitled action, having come on to be heard, and having been heard and duly considered, and the facts therein stated having been found to be true ; now, on motion of William W. Macfarland, Esq., of counsel for the said Receiver, and on hearing Messrs. Turner, Lee & McClure, of counsel for the Farmers' Loan and Trust Company,

It is Ordered :

First.—That all the accounts, acts, and doings of the said Receiver in this action heretofore reported by the said Referee, James C. Spencer, Esq., to this Court, and by this Court confirmed, do stand confirmed as adjusted, settled, and final accounts in the premises, subject to any special accounting that may have heretofore been ordered and not as yet had.

Second.—That the said Receiver do transfer, deliver and surrender to the said New York, Lake Erie and Western Railroad Company all the property and franchises whereof he is now possessed as Receiver in this action, and which were embraced or intended to be embraced in the judgment of foreclosure herein, subject to the reservations and exceptions hereinafter specified, and subject to all and singular the rights of the People of this State in and to the premises, or any part thereof, as the same may be ascertained on due enquiry and examination by the Attorney-General in the action of the People of this State against the Erie Railway Company, now pending, to the end that such rights and interests may be as fully protected as if this transfer had not been ordered and directed ; and that upon such transfer, delivery, and surrender, the said Receiver be, and he is hereby absolutely and forever discharged of and from any and all liability as Receiver in this action, for the property and franchises so delivered, transferred, and surrendered.

Third.—The said Hugh J. Jewett is hereby continued Receiver in this action, with all needful power and authority as such Receiver to provide for the payment, and to pay, satisfy, and discharge or adjust any and all outstanding indebtedness of his Receivership, or any part thereof, and with all needful authority over the property and franchises herein directed to be transferred and delivered to the said New York, Lake Erie and Western Railroad Company for this purpose ; and he is hereby also continued Receiver for all and every purpose needful and proper to enable him to settle and finally adjust all out-

standing accounts and transactions in anywise growing out of his Receivership, and for all and every purpose of finally adjusting and settling his accounts in this action, with full power and authority to this end in and about the premises. And the said Hugh J. Jewett is hereby continued Receiver for the purpose of prosecuting and defending all actions by or against himself as Receiver which he is now prosecuting or defending, and all actions by or against the said Erie Railway Company which the said Receiver is now prosecuting or defending, with full power and authority to do all things needful and proper in and about the prosecution and defence of such actions.

Fourth.—With the exception hereinabove mentioned, and subject to the liability of rendering a final, full, true, and just account of all his receipts and disbursements, acts and doings in the premises not embraced in his aforesaid accounts hereinbefore rendered, reported, and approved, the said Hugh J. Jewett is hereby absolutely and forever discharged of and from his said Receivership in this action, and his sureties, executors, and administrators are hereby absolutely and forever discharged of and from any and all liability connected with or growing out of the said Receivership.

[L. S.] (A copy.) HENRY A. GUMBLETON, *Clerk.*

No. 14.

At a Special Term of the Supreme Court, held at the Court House, New York City, the sixth day of June, 1878.

Present—Hon. CHARLES DONOHUE, *Justice.*

THE FARMERS' LOAN AND TRUST CO., *Trustee,* *against* THE ERIE RY. CO., *et al.*	*Affidavits. Order Modifying Decree.*

On reading and filing the affidavits of Herbert B. Turner and of John M Finch, hereto annexed, and on motion of Turner, Lee & McClure, plaintiff's attorneys:

It is ordered, that the judgment of foreclosure and sale herein, entered November 7, 1877, be so far modified and changed as to authorize and direct the Referee to sell therein named, to pay from the proceeds of the sale only such taxes as are not disputed by the defendant the Erie Railway Company; and, further, that the said Referee, in case of taxes now assessed, but the amounts of which cannot now be ascertained, be authorized to retain for their payment the sum of seventeen thousand dollars, and no more.

(Title of Action.)

City and County of New York, ss.:

HERBERT B. TURNER, being duly sworn, says:

I. I am one of the attorneys for the plaintiff in this action, in which a decree of foreclosure and sale was entered November 7, 1877.

II. The said decree, among other things, provided that the Referee to sell the mortgaged premises therein appointed, should pay, out of the proceeds of the sale, all lawful taxes and assessments upon the mortgaged premises, or any part thereof, if any, remaining unpaid at the time of the sale, to the person, persons, or corporations entitled to receive the same.

III. The purchasers of the mortgaged premises upon the sale under the said decree, have paid to the Referee, to sell, a large sum of money, the greater part of which remains undistributed.

IV. Since the said sale, I have learned that certain claims for unpaid taxes exist against the defendant, the Erie Railway Company, on the part of the City, County, and State of New York, and on the

part of the United States, which are disputed by the said defendant and the purchasers of the said property, and their assignees are desirous that the same should not be paid, but that the judgment should be so far modified and changed in that behalf that the said Referee should be directed to pay out of the said moneys in his hands only such taxes as are undisputed and unquestioned, and not to pay any taxes which are so disputed as aforesaid.

V. I am also informed that other taxes against the said defendant now exist, and are valid liens against the mortgaged premises, or some part thereof, the exact amount of which cannot now be ascertained, as to which I refer to the affidavit of John M. Finch, Esq., hereto annexed, for further particulars. As to these unadjusted taxes, I am informed that the purchasers and their assignees are willing that the sum of seventeen thousand dollars be retained by the Referee for their payment, and that if they should exceed that sum, they are willing to pay such excess.

Sworn before me this 6th day of June, 1878. } HERBERT B. TURNER.

JOHN H. HENSHAW, *Notary Public*, N. Y. Co.

City and County of New York, ss.:

JOHN M. FINCH, being duly sworn, deposes and says: I reside at Hornellsville, and am by profession an attorney and counsellor-at-law. I am and have been for the last twelve years general land agent of the Erie Railway Company, and as such agent, among other things, it has been my duty to attend to the payment of all taxes assessed upon the road beyond the limits of the City of New York and west of the State of New Jersey. The nature of these taxes is as follows: city taxes, village taxes, school district taxes and highway taxes. These taxes are levied by the different authorities at different seasons of the year, and these become payable at different periods, and the different bodies authorized to assess and collect such taxes would amount in the aggregate to probably one hundred and seventy-five, located in different parts of the State, and more or less widely separated. Many of these taxes had been assessed before the sale of the road, bills for which, however, had not been presented, and the precise amount of which could not be ascertained in less than six weeks, nor without considerable expense in obtaining such information.

My long experience in connection with the payment and adjustment of such taxes, enables me to approximate very nearly to the amount of taxes assessed upon the property at the time of the sale, for which no bills have been rendered, and I am able to say that the amount will not in all probability exceed seventeen thousand dollars. JNO. M. FINCH.

Sworn before me, this 4th day of June, 1878. }

MAU'CE SPILLANE, *Notary Public*, N. Y. Co.

No. 15.

Deed.—Curtis, Referee, to Morgan and others, Trustees.—April 26, 1878.

An Indenture, made the twenty-sixth day of April, in the year one thousand eight hundred and seventy-eight, between George Ticknor Curtis, a Referee, duly appointed by the Supreme Court of the State of New York, in the action hereinafter mentioned, party of the first part, and Edwin D. Morgan, of the city and State of New York, John Lowber Welsh, of the city of Philadelphia, State of Pennsylvania, and David A. Wells, of the city of Norwich, State of Connecticut, trustees, parties of the second part.

Whereas, by an Act of the Legislature of the State of New York, passed April 24th, 1832, entitled "An Act to incorporate the New York and Erie Railroad Company," a corporation was created under the name of the New York and Erie Railroad Company, for the purpose of constructing, owning and

operating a line of railroad for the carriage of freight and passengers between the city of New York and Lake Erie, in the said State;

And whereas, by the said Act and other supplementary Acts of the Legislature of the said State, and by certain statute laws of the State of Pennsylvania, the said New York and Erie Railroad Company was authorized to construct and operate a certain part of its line of railroad through the counties of Pike and Susquehanna, respectively, in the said State of Pennsylvania;

And whereas, the said New York and Erie Railroad Company afterwards, and under and by virtue of the laws of the State of New Jersey, acquired various franchises, privileges, powers, leasehold estates and interests in the State of New Jersey;

And whereas, the said New York and Erie Railroad Company, being so possessed of the property and premises aforesaid, with their appurtenances, franchises and privileges, did create by way of mortgage, five separate liens upon its said property and franchises, each of such liens being for the security of certain bonds of the said company for the payment of money therein, and each of the said mortgages particularly specified and described, which said liens upon the said premises to a certain extent still exist, and are believed to be substantially as follows, that is to say:

A mortgage, known as the first mortgage, to secure a series of bonds, whereof there are $2,483,000 of the principal sum thereof now outstanding and unpaid, which become payable on the first day of May, 1897.

A mortgage, known as the second mortgage, to secure a series of bonds, whereof there are $2,174,000 of the principal sum thereof now outstanding, and which are payable September 1, 1879;

A mortgage, known as the third mortgage, to secure a series of bonds, whereof there now outstanding and unpaid $4,852,000 of the principal sum thereof, which become payable March 1, 1883;

A mortgage, known as the fourth mortgage, to secure a series of bonds, whereof there are now outstanding and unpaid $3,937,000 of the principal sum thereof, which become payable October 1, 1880;

A mortgage, known as the fifth mortgage, to secure a certain other series of bonds, whereof there are now outstanding $709,500 of the principal sum thereof, and which become payable on the first day of June, 1888,—the interest upon the said several series of bonds having been paid from time to time as such interest became due and payable;

And whereas, the said New York and Erie Railroad Company continue to operate its said line of railroad, including that part thereof lying within the State of Pennsylvania, as hereinbefore stated, and including its leasehold estates, rights, privileges and franchises within the State of New Jersey, until some time in the year 1859, when the said company became insolvent, and such proceedings were thereupon and thereafter had that all and singular the aforesaid property, franchises, rights, privileges and appurtenances, and all estate of the said New York and Erie Railroad Company, real, personal and mixed, and of every kind and description, were foreclosed and sold, and a certain other corporation lawfully created under and by virtue of the laws of the State of New York, under the name and style of the Erie Railway Company, thereafter, and in pursuance of such foreclosure and sale, succeeded to, acquired, and became lawfully possessed of all and singular the said property, real, personal and mixed, rights, privileges and franchises, situate in the three States respectively before mentioned, the title of which last-mentioned company to all and singular the premises were duly confirmed by law;

And whereas, afterwards, to wit, on or about the 1st day of September, 1870, the said Erie Railway Company, being so seized and possessed of the premises as aforesaid, and being thereto duly authorized by law, executed and delivered to the Farmers' Loan and Trust Company, a corporation duly organized and existing under the laws of the State of New York, and having lawful authority to receive the same, a certain indenture wherein and whereby the said Erie Railway Company did convey to the said Farmers' Loan and Trust Company by way of mortgage, in trust, all and singular the railway of the said company, from and including Piermont, on the Hudson River, to and including the final terminus of the said railway on Lake Erie; and the railway known as the Newburgh Branch, from Newburgh to the main line; and also all that part of the railway designated as the Buffalo Branch of the Erie Rail-

way, extending from Hornellsville to Attica, in the State of New York; and also all other railways belonging to the said company in the States of New York, Pennsylvania and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the said company,; and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to the said company, and all tolls, incomes, issues and profits arising out of the said property, and all rights to receive or recover the same; also all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action, of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, by the Union Railroad Company, the Buffalo, New York and Erie Railroad Company, by the Buffalo, Bradford and Pittsburgh Railroad Company, by the Rochester and Genesee Valley Railroad Company, and by the Long Dock Company; which said mortgage was made to secure certain bonds or obligations of the said Erie Railway Company for the payment of money therein particularly described, and whereof the said company duly created and issued bonds to the amount in the aggregate of $16,656,000, all of which are understood and believed to be outstanding at the date hereof, and secured by said mortgage, together with a considerable amount of interest thereon, which has accrued and become due and payable;

And whereas, afterwards, to wit, on the 4th day of February, A. D. 1874, the Erie Railway Company aforesaid being thereto duly authorized by law, executed and delivered to the said Farmers' Loan and Trust Company a certain other indenture of mortgage, in trust, to secure bonds or obligations of the said Erie Railway Company for the payment of money to the amount in the aggregate of $30,000,000, as will more fully and at large appear by the said mortgage, reference thereto being had, of which $24,400,000 are now understood and believed to be outstanding and unpaid, together with a large amount of interest accrued, due and payable thereon, wherein and whereby said Erie Railway Company did convey to the said Farmers' Loan and Trust Company, in trust, all and singular the property, appurtenances, franchises, rights and privileges hereinafter described, including and embracing all and singular the property, real, personal and mixed, franchises, rights and privileges then possessed by the said Erie Railway Company of every kind and description, as by the said last-mentioned indenture will fully and at large appear, reference thereto being had; all of which aforesaid mortgages of the said New York and Erie Railroad Company and of the said Erie Railway Company were duly recorded as required by law;

And whereas, default having been made in the payment of interest upon the said last-mentioned bonds or obligations, according to the tenor thereof, and a right of action thereupon having accrued to the said Farmers' Loan and Trust Company, afterwards, to wit, on or about the 15th day of June, A. D. 1875, the said Farmers' Loan and Trust Company commenced an action in the Supreme Court of the State of New York for a foreclosure of the said last-mentioned mortgage, in which action the Farmers' Loan and Trust Company, trustee, was the plaintiff, and the Erie Railway Company, James H. Bertholf, Elizabeth J. Blair, as administratrix of Nathaniel B. Blair, deceased; James Dwyer, Abram Dyer, The Farmers' and Mechanics' National Bank of Buffalo, William H. Gurney, Archibald H. Gates, Russell H. Heywood, John Siemon, Alexander Muir, as administrator of Annie Roe, deceased; Orrin O. Olmstead, Lydia Page, Eliza M. Page, as administratrix of Howard M. Page, deceased; George W. Randall, Nicholas Rassel, Aaron Smith, Solomon Scheu, George Talbot, Austin Thomas, Patrick Whalen and others, were defendants, in which action such proceedings were had that afterwards, to wit, on the 7th day of November, A. D. 1877, a judgment was rendered for the foreclosure and sale of all and singular the mortgaged premises, to which judgment in the said Supreme Court for the City and County of New York, and therein of record, reference is had;

And whereas, in and by the said judgment the said party of the first part was appointed Referee

to sell all and singular the premises and property in and by the said judgment decreed, adjudged and directed to be sold, subject as therein set forth and according to the directions therein contained, unless previous to said sale the said defendant the Erie Railway Company should pay to the said plaintiff, or to said Referee for the said plaintiff, the amounts in said judgment found as actually due and payable for principal and interest upon the bonds issued under and secured by the said mortgage to the plaintiff, dated February 4th, 1874, with interest thereon from the date of said judgment, and the costs, fees and allowances in said action, to be adjusted, and the costs of proceedings for a sale up to the time of such payment, which said payment the Erie Railway Company aforesaid has wholly failed to make;

And whereas, the said party of the first part, in pursuance of the said judgment, did, on the 24th day of April, A. D. 1878, at the Merchants' Exchange Salesroom, No 111 Broadway, in said City of New York, duly expose all and singular the mortgaged premises therein and thereby embraced, described and directed to be sold, except as hereinafter stated, for sale at public auction, due notice of the time and place of such sale having been given, pursuant to said judgment and according to law, and the said judgment having been complied with in all things touching and relating to the said sale;

And whereas, at such sale the parties of the second part hereto were the highest bidders for said premises, and thereupon, all and singular the premises so as aforesaid in and by the said judgment directed to be sold by the party of the first part, were struck off to the said parties of the second part, except as hereinafter stated, for the sum of Six million dollars, that being the highest sum bidden therefor;

And whereas, afterwards, the said party of the first part, Referee, as aforesaid, did duly make his report of the said sale to the Supreme Court on the twenty-fifth day of April, A. D. 1878, which said report, upon due notice to all parties, and the said sale therein reported, was, by order of said Court, bearing date the twenty-fifth day of April, A. D. 1878, duly confirmed:

And whereas, in and by said last mentioned order of said Court, the said Referee, party of the first part, was ordered to execute and deliver to the said parties of the second part a good and sufficient deed of conveyance of all and singular the premises of every kind and description so sold, as aforesaid, pursuant to the terms and conditions of such sale, and that such conveyance of the premises should be valid and effectual forever, and that upon the due execution and delivery of the said deed possession of the said premises thereof and every part thereby conveyed, or intended so to be, should be surrendered and delivered to the said grantees, parties of the second part:

Now, therefore, this Indenture witnesseth, That the said George Ticknor Curtis, Referee as aforesaid, party of the first part to these presents, in order to carry into effect the sale made by him as aforesaid to the said parties of the second part, in pursuance of the aforesaid judgment and in conformity to law, and in consideration of the premises and of the price and sum so bidden, as aforesaid, by the said parties of the second part, and by them to him paid, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, aliened, released and confirmed, and by these presents doth grant, bargain, sell, assign, alien, release, convey and confirm unto the said Edwin D. Morgan, John Lowber Welsh and David A. Wells, trustees as aforesaid, parties of the second part hereto, and to the survivors and survivor of them and their and his heirs, successors and assigns forever, all and singular the property, franchises and estate, whether real, personal or mixed, and wherever situate, and whether within or without this State, embraced and included in the said judgment and authorized and directed to be sold therein and thereby, of which said property, franchises and estate, real, personal and mixed, the following is a general and the best practicable description, that is to say:

All and singular the Railway of the said Company, from and including Piermont on the Hudson River, to and including the final terminus of the said Railway on Lake Erie, and the Railway known as the Newburgh Branch, from Newburgh to the main line, and also all that part of the Railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York, and also all other Railways belonging to said company in the States of New York, Pennsyl-

vania and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the said Company, and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood, and supplies of every kind belonging or appertaining to the said Company, and all the tolls, incomes, issues and profits arising out of the said property, and all rights to receive or recover the same; also all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action, of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, by the Union Railroad Company, by the Buffalo, New York and Erie Railroad Company, by the Buffalo, Bradford and Pittsburgh Railroad Company, by the Rochester and Genesee Valley Railroad Company, and by the Long Dock Company, and this description is to be understood as embracing and including all and singular the *choses in action*, stocks, bonds, book accounts, bills receivable and other evidences of indebtedness, leasehold estates, contracts, and other property in the said judgment mentioned or therein directed to be sold; except, however, as follows: (1) A lease of The Atlantic and Great Western Railroad Company to the Erie Railway Company, bearing date July 6th, 1874: (2). A contract between the Atlantic and Great Western Railroad Company, of the first part, and the Erie Railway Company and others, of the second part, bearing date May 6th, 1874: (3) Another contract of the same date between The Atlantic and Great Western Railroad Company, of the first part, and the Erie Railway Company of the second part: (4) A memorandum of agreement, or lease, dated November 8th, 1871, between the Erie Railway Company, of the first part, and Lauren C. Woodruff (lessee of the Erie and Genesee Valley Railroad Company) of the second part:

Together with any and all property of every kind and description by the Receiver, in said action appointed, acquired during his receivership, with the proceeds of the rents, profits and issues of the said mortgaged premises as in said judgment or decree set forth, and therein directed to be sold by said Referee as a part of said mortgaged property and premises:

Together also with all and every the right, title, estate and interest which the defendants above named or any of them had in or to the property and premises hereinabove described or mentioned on the day of the date of the said indenture of mortgage of February 4, 1874, or at any time thereafter acquired, except as aforesaid.

To have and to hold all and singular the above mentioned and described property and premises hereby conveyed or intended so to be, unto the said parties of the second part as trustees as aforesaid, and the survivors and survivor of them and their and his heirs, successors and assigns, as joint tenants however, and not as tenants in common, to their own proper use, benefit and behoof forever.

Subject, however, to all such liens and encumbrances thereon at the time of said sale which were prior to the said mortgage by the said Erie Railway Company to the said Farmers' Loan and Trust Company of February 4th, 1874;

And subject, also, to all contracts heretofore lawfully made by the said Receiver in pursuance of the authority of said Court which at the date of said sale were executory, all of which are by said judgment declared to be liens upon said mortgaged premises; as well as subject to all lawful indebtedness of the said Receiver made or incurred by him as such, during his said Receivership, which said indebtedness is also hereby declared to be a lien upon said mortgaged premises, prior in point of lien and obligation to either of the aforesaid mortgages executed and delivered by the Erie Railway Company to the Farmers' Loan and Trust Company as Trustee, which said contracts and obligations, and lawful indebtedness of said Receiver, the said parties of the second part do hereby assume, and from and against which they do hereby covenant to indemnify and save the said Receiver harmless.

In witness whereof, the said George Ticknor Curtis, party of the first part, Referee as aforesaid, hath hereunto set his hand and seal, at the City of New York aforesaid, the day and year first above written.

GEO. TICKNOR CURTIS, *Referee.*

In presence of JAMES H. FAY. [SEAL.]

(Duly acknowledged and recorded.)

No. 16.

Deed.—The Erie Railway Company to Morgan and others, Trustees.—April 26, 1878

INDENTURE made this twenty-sixth day of April, in the year one thousand eight hundred and seventy-eight, between the Erie Railway Company, party of the first part, and Edwin D. Morgan, of the City and State of New York, John Lowber Welsh, of the City of Philadelphia, State of Pennsylvania, and David A. Wells, of the City of Norwich, State of Connecticut, trustees, parties of the second part:

Whereas, by an Act of the Legislature of the State of New York, passed April 24th, 1832, entitled "An Act to incorporate the New York and Erie Railroad Company," a corporation was created under the name of the New York and Erie Railroad Company, for the purpose of constructing, owning, and operating a line of railroad for the carriage of freight and passengers between the City of New York and Lake Erie, in the said State;

And whereas, by the said Act and other supplementary Acts of the Legislature of the said State, and by certain statute laws of the State of Pennsylvania, the said New York and Erie Railroad Company was authorized to construct and operate a certain part of its line of railroad through the Counties of Pike and Susquehanna, respectively, in the said State of Pennsylvania;

And whereas, the said New York and Erie Railroad Company afterwards, and under and by virtue of the laws of the State of New Jersey, acquired various franchises, privileges, powers, leasehold estates, and interests in the State of New Jersey;

And whereas, the said New York and Erie Railroad Company, being so possessed of the property and premises aforesaid, with their appurtenances, franchises, and privileges, did create, by way of mortgage, five separate liens upon its said property and franchises, each of such liens being for the security of certain bonds of the said company, for the payment of money therein, and in each of the said mortgages particularly specified and described, which said liens upon the said premises to a certain extent still exist, and are believed to be substantially as follows, that is to say:

A mortgage, known as the first mortgage, to secure a series of bonds, whereof there are $2,483,000 of the principal sum thereof now outstanding and unpaid, which become payable on the first day of May, 1897;

A mortgage, known as the second mortgage, to secure a series of bonds, whereof there are $2,174,000 of the principal sum thereof now outstanding, and which are payable September 1, 1879;

A mortgage, known as the third mortgage, to secure a series of bonds, whereof there are now outstanding and unpaid $4,852,000 of the principal sum thereof, which become payable March 1, 1883;

A mortgage, known as the fourth mortgage, to secure a series of bonds, whereof there are now outstanding and unpaid $2,937,000 of the principal sum thereof, which become payable October 1, 1880;

A mortgage, known as the fifth mortgage, to secure a certain other series of bonds, whereof there are now outstanding $709,500 of the principal sum thereof, and which become payable on the first day of June, 1888. The interest upon the said several series of bonds having been paid from time to time as such interest became due and payable;

And whereas, the said New York and Erie Railroad Company continued to operate its said line of railroad, including that part thereof lying within the State of Pennsylvania, as hereinbefore stated, and including its leasehold estates, rights, privileges, and franchises within the State of New Jersey, until some time in the year 1859, when the said company became insolvent, and such proceedings were thereupon and thereafter had that all and singular the aforesaid property, franchises, rights, privileges, and appurtenances, and all estate of the said New York and Erie Railroad Company, real, personal, and mixed, and of every kind and description, were foreclosed and sold, and a certain other corporation lawfully created under and by virtue of the laws of the State of New York, under the name and style of the Erie Railway Company, thereafter and in pursuance of such foreclosure and sale, succeeded to, acquired, and became lawfully possessed of all and singular the said property, real, personal, and mixed, rights, privileges, and franchises situate in the three States respectively before mentioned, the title of which last-mentioned company to all and singular the premises was duly confirmed by law;

And whereas, afterwards, to wit, on or about the first day of September, 1870, the said Erie Railway Company, being so seized and possessed of the premises as aforesaid, and being thereto duly authorized by law, executed and delivered to the Farmers' Loan and Trust Company, a corporation duly organized and existing under the laws of the State of New York, and having lawful authority to receive the same, a certain indenture wherein and whereby the said Erie Railway Company did convey to the said Farmers' Loan and Trust Company, by way of mortgage, in trust, all and singular the railway of the said company, from and including Piermont, on the Hudson River, to and including the final terminus of the said railway on Lake Erie, and the railway known as the Newburgh Branch, from Newburgh to the main line, and also all that part of the railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York; and also all other railways belonging to the said company in the States of New York, Pennsylvania, New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges, and rights of the said company; and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood, and supplies of every kind belonging or appertaining to the said company, and all tolls, incomes, issues and profits arising out of the said property, and all rights to receive or recover the same; also, all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action, of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, by the Union Railroad Company, the Buffalo, New York and Erie Railroad Company, by the Buffalo, Bradford and Pittsburgh Railroad Company, by the Rochester and Genesee Valley Railroad Company, and by the Long Dock Company; which said mortgage was made to secure certain bonds or obligations of the said Erie Railway Company for the payment of money therein particularly described, and whereof the said company duly created and issued bonds to the amount in the aggregate of $16,656,000—all of which are understood and believed to be outstanding at the date hereof, and secured by said mortgage, together with a considerable amount of interest thereon, which has accrued and become due and payable;

And whereas, afterwards, to wit, on the 4th day of February, A. D. 1874, the Erie Railway Company aforesaid, being thereto duly authorized by law, executed and delivered to the said Farmers' Loan and Trust Company a certain other indenture of mortgage, in trust to secure bonds or obligations of the said Erie Railway Company, for the payment of money to the amount in the aggregate of $30,000,000, as will more fully and at large appear by the said mortgage, reference thereto being had, $24,400,000 of which are now understood and believed to be outstanding and unpaid, together with a large amount of interest accrued, due and payable thereon, wherein and whereby the said Erie Railway Company did convey to the said Farmers' Loan and Trust Company, in trust, all and singular the property, appurtenances, franchises, rights and privileges hereinafter described, including and embracing all and singular the property, real, personal and mixed, franchises, rights and privileges then possessed by the said Erie Railway Company, of every kind and description, as by the said last-mentioned indenture will fully and at large appear, reference thereto being had; all of which aforesaid mortgages of the said New York and Erie Railroad Company, and of the said Erie Railway Company, were duly recorded, as required by law;

And whereas, default having been made in the payment of interest upon the said last-mentioned bonds or obligations, according to the tenor thereof, and a right of action thereupon having accrued to the said Farmers' Loan and Trust Company, afterwards, to wit, on or about the 15th day of June, A. D. 1875, the said Farmers' Loan and Trust Company commenced an action in the Supreme Court of the State of New York, for a foreclosure of the said last-mentioned mortgage, in which action the Farmers' Loan and Trust Company, trustee, was the plaintiff, and the Erie Railway Company, James H. Bertholf, Elizabeth J. Blair, as administratrix of Nathaniel B. Blair, deceased, James Dwyer, Abram Dyer, The Farmers' and Mechanics' National Bank of Buffalo, William H. Gurney, Archibald H. Gates

Russell H. Heywood, John Siemon and Alexander Muir, as administrator of Annie Roe, deceased, Orrin O. Olmstead, Lydia Page, Eliza M. Page, as administratrix of Howard M. Page, deceased, George W. Randall, Nicholas Rassel, Aaron Smith, Solomon Schen, George Talbot, Austin Thomas, Patrick Whalen, and others, were defendants, in which action such proceedings were had that afterwards, to wit, on the 7th day of November, A. D. 1877, a judgment was rendered for the foreclosure and sale of all and singular the mortgaged premises, to which judgment in the said Supreme Court for the City and County of New York, and therein of record, reference is had;

And whereas, in and by the said judgment George Ticknor Curtis, counsellor-at-law of said City of New York, was appointed Referee, to sell all and singular the premises in said judgment decreed, adjudged and directed to be sold, according to the directions in said judgment contained, unless previous to said sale the said defendant the Erie Railway Company should pay to the said plaintiff or to said Referee, for the said plaintiff, the amounts in said judgment found as actually due and payable for principal and interest upon the bonds issued under and secured by the said mortgage to the plaintiff, dated February 4th, 1874, with interest thereon from the date of said judgment, and the costs, fees and allowances in said action to be adjusted, and the costs of proceeding for a sale up to the time of such payment, which said payment the Erie Railway Company aforesaid has wholly failed to make;

And whereas, the said Referee, in pursuance of said judgment, did, on the 24th day of April, A. D. 1878, at the Merchants' Exchange Salesrooms, No. 111 Broadway, in the said City of New York, expose all and singular the mortgaged premises therein and thereby embraced, described and directed to be sold for sale at public auction, except, however, as follows: (1) A lease of The Atlantic and Great Western Railroad Company to the Erie Railway Company, bearing date July 6th, 1874. (2) A contract between The Atlantic and Great Western Railroad Company of the first part, and the Erie Railway Company, and others, of the second part, bearing date May 6th, 1874. (3) Another contract of same date between The Atlantic and Great Western Railway Company of the first part, and the Erie Railway Company of the second part. (4) A memorandum of agreement or lease, dated Nov. 6th, 1871, between the Erie Railroad Company of the first part, and Lauren C. Woodruff (lessee of the Erie and Genesee Valley Railroad Company) of the second part, due notice of the time and place of such sale having been given, pursuant to said judgment and according to law, and the said judgment having been complied with by said Referee in all things touching and relating to the said sale;

And whereas, at such sale the parties of the second part hereto were the highest bidders for said premises so sold, and thereupon all and singular the premises so as aforesaid in and by the said judgment directed to be sold, except as aforesaid, were struck off to the said parties of the second part for the sum of Six Million Dollars, that being the highest sum bidden for the same;

And whereas, afterwards, the said Referee did duly make his report of the said sale to the said Court on the twenty-fifth day of April, A. D. 1878, which said report, and the said sale therein reported, was, by order of said Court, bearing date the twenty-fifth day of April, A. D. 1878, duly confirmed;

And whereas, in and by said last-mentioned order of said Court, the said Referee was ordered to execute and deliver to the said parties of the second part a good and sufficient deed of conveyance of all and singular the premises of every kind and description so sold as aforesaid, pursuant to the terms and conditions of such sale, and that such conveyance of the premises should be valid and effectual forever, and that upon the due execution and delivery of the said deed, possession of the said premises and every part thereof, thereby conveyed or intended so to be, should be surrendered and delivered to the said purchasers, parties of the second part hereto;

And whereas, pursuant to the said judgment, bearing date the 7th day of November, A. D. 1877, and to the terms of said sale, as well as pursuant to the said order of confirmation thereof, the said Referee, in consideration of the sum bidden as aforesaid, has made, executed and delivered to said parties of the second part hereto, as trustees as aforesaid, a deed of conveyance of all and singular the property and premises, franchises and estate so as aforesaid sold, whether real, personal, or mixed, or

wherever situate, and whether within or without this State, embraced and included in the said judgment, and authorized and directed to be sold therein and thereby, except as aforesaid, which deed bears even date herewith;

And whereas, in and by said judgment hereinabove mentioned of November 7th, A. D. 1877, it was among other things ordered, adjudged and decreed, that the said Erie Railway Company should, and the said company was thereby authorized and directed to execute and deliver, under the direction of the said Referee, a conveyance by way of confirmation and further assurance of title to the purchaser or purchasers on said sale, their representatives or assigns, of all and singular the mortgaged premises of every kind and description, and wherever situated, therein directed to be sold by said Referee, the form of such deed and the mode of execution thereof to be settled and approved by said Referee, and that such deed and conveyance should be delivered to such purchaser or purchasers, their representatives or assigns, contemporaneously with the deed or deeds of the said Referee;

And whereas, the form of these presents, and the mode of execution thereof, have been settled and approved by the said Referee, and his certificate thereof by him signed has been endorsed hereon;

Now, therefore, this Indenture witnesseth, that the said party of the first part hereto, pursuant to the authority and direction to it in said judgment or decree contained, as hereinabove recited, and in consideration thereof as well in consideration of the premises and of one dollar to it in hand paid by the said parties of the second part the receipt of which is hereby acknowledged, hath granted, bargained, sold, assigned, aliened, released, and confirmed, and by these presents doth grant, bargain, sell, assign, alien, release, convey, and confirm unto the said Edwin D. Morgan, John Lowber Welsh, and David A. Wells, Trustees as aforesaid, parties of the second part hereto, and to the survivor and survivors of them, and their and his heirs, successors, and assigns forever, all and singular the property, franchises, and estate, whether real, personal, or mixed, and wherever situate, and whether within or without this State, embraced and included in the said judgment or decree, and therein or thereby authorized and directed to be sold, except the leases and contracts so excepted as aforesaid, of which said property, franchises and estate, real, personal and mixed, the following is a general and the best practical description, that is to say:

All and singular the railway of the said company, from and including Piermont on the Hudson River to and including the final terminus of the said railway on Lake Erie, and the railway known as the Newburgh Branch, from Newburgh to the main line; and also all that part of the railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York; and also all other railways belonging to said company in the State of New York, Pennsylvania, and new Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges, and rights of the said company; and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood, and supplies of every kind belonging or appertaining to said company, and all the tolls, incomes, issues and profits arising out of the said property, and all rights to receive or recover the same; also all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action, of whatsoever name or nature in law or in equity, conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, by the Union Railroad Company, by the Buffalo, New York and Erie Railroad Company, by the Buffalo, Bradford and Pittsburgh Railroad Company, by the Rochester and Genesee Valley Railroad Company, and by the Long Dock Company; and this description is to be understood as embracing and including all and singular the *choses in action*, stocks, bonds, book accounts, bills receivable, and other evidences of indebtedness, leasehold estates, contracts and other property in the said judgment mentioned, or therein directed to be sold, together with any and all property of every kind and description by the Receiver, in said action appointed, acquired during his receivership, with the proceeds of the rents, profits and issues of the said mortgaged premises as in said judgment or decree set

forth, and therein directed to be sold by said Referee as a part of said mortgaged property and premises; except the leases and contracts excepted from the sale as hereinabove set forth;

To have and to hold all and singular the above mentioned and described property and premises hereby conveyed, or intended so to be, unto the said parties of the second part, as Trustees as aforesaid, and the survivors and survivor of them and their and his heirs, successors and assigns, as joint tenants, however, and not as tenants in common, to their own proper use, benefit and behoof forever;

Subject, however, as is set forth in said deed bearing even date herewith, executed and delivered by said Referee to said parties of the second part, as is hereinabove recited.

And the said party of the first part, for itself, its successors and assigns, doth covenant, grant and agree to and with the said parties of the second part and the survivors and survivor of them, and their and his heirs, successors and assigns, that the said party of the first part and its successors, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest of, in, or to the property or premises hereinbefore granted and conveyed, or intended so to be, by, from, under or in trust for the said party of the first part or its successors, shall and will, at any time or times hereinafter, upon the reasonable request and at the proper costs and charges in the law of the said parties of the second part, their successors and assigns, make, do, and execute, or cause or procure to be made, done or executed, all and every such further or other lawful and reasonable acts, conveyances, or assurances in the law for the better or more effectually vesting and confirming the property and premises hereby intended to be granted in and to the said parties of the second part, and their heirs, successors and assigns forever, in which shall be set forth a full, particular, and detailed description of said property and premises, specifically locating the same by metes and bounds, and by dates, times and places of record of all deeds, leases or contracts under which the said property and premises were conveyed to or are claimed by the said party of the first part, as by the said parties of the second part, or their heirs, successors or assigns, or their counsel learned in the law, shall be reasonably devised, advised or required.

In witness whereof, the party of the first part hath caused its Corporate Seal to be hereto affixed, and these presents to be subscribed by its President and Secretary, at the City of New York, the day and year first above written.

THE ERIE RAILWAY COMPANY,

In presence of

By H. J. JEWETT, *President.*

A. R. MACDONOUGH, *Secretary, &c.*

April 26, 1878.—The foregoing Deed is approved by me.

GEO. TICKNOR CURTIS, *Referee.*

(Duly acknowledged and recorded.)

No. 17.

Deed.—Morgan and others, Trustees, to The New York, Lake Erie and Western Railroad Company.—April 27, 1878.

Indenture made this twenty-seventh day of April, A. D. one thousand eight hundred and seventy-eight, by and between Edwin D. Morgan, of the City and State of New York, John Lowber Welsh, of the City of Philadelphia, State of Pennsylvania; and David A. Wells, of the City of Norwich, State of Connecticut, Trustees, parties of the first part; and the New York, Lake Erie and Western Railroad Company, a corporation duly incorporated and organized under and by virtue of the laws of the State of New York, party of the second part.

Whereas, an action was heretofore brought in the Supreme Court of the State of New York, with venue laid in the city and county of New York, in which action the Farmers' Loan and Trust Company, as Trustee, was plaintiff, and the Erie Railway Company, James H. Bertholf and others were defendants, for the foreclosure of a certain indenture of mortgage made by the Erie Railway Company, defendant, as aforesaid, to the said plaintiff the Farmers' Loan and Trust Company, Trustee, as aforesaid,

bearing date the fourth day of February, A. D. one thousand eight hundred and seventy-four, and for the sale of the mortgaged premises, franchises, and property in said indenture described;

And whereas, a similar action was, at or about the same time, brought in the Court of Chancery in the State of New Jersey, in which the Farmers' Loan and Trust Company, Trustee, as aforesaid, was plaintiff, and the Erie Railway Company aforesaid was the defendant, for the foreclosure of said mortgage in respect to that part of said property and franchises embraced in the said mortgage, situate in the State of New Jersey; and a similar action was brought in the Court of Common Pleas for the county of Pike, in the State of Pennsylvania, for the foreclosure of said mortgage in respect of that part of the property and franchises embraced therein situate in the said State of Pennsylvania, which said last mentioned two actions were brought as auxiliary to said first mentioned action, and were prosecuted in aid thereof;

And whereas, during the pendency of said first mentioned action, the beneficiaries of the plaintiff, as trustee as aforesaid, that is to say, the owners and holders of bonds issued under said mortgage and by it secured, acting together with stockholders of said Erie Railway Company, entered into an agreement, the object of which was to protect their respective interests in the said mortgaged premises by a purchase thereof, at any sale thereof, made under and pursuant to any judgment in said action entered, and in accordance with said agreement, appointed the said parties of the first part hereto purchasing trustees for the purpose of making such purchase on their behalf of said mortgaged premises, upon such sale, in anticipation of the readjustment of the respective interests of said bondholders and said stockholders in and to the said mortgaged premises, and of the organization of a new corporation to become possessed of the said mortgaged premises, franchises and property under and in accordance with the provisions of chapter 430 of the Laws of 1874 of the State of New York, entitled "An Act to facilitate the reorganization of railroads sold under mortgage, and providing for the formation of new companies in such cases," passed May 11th, 1874, and any amendments thereof thereafter made;

And whereas, under and pursuant to a final judgment of foreclosure and sale, thereafter entered in said action, which judgment bears date the seventh day of November, A. D. one thousand eight hundred and seventy-seven, the said mortgaged premises, franchises and property were by George Ticknor Curtis, the Referee in said judgment appointed for that purpose, exposed for sale at public sale on the twenty-fourth day of April, A. D. one thousand eight hundred and seventy-eight, and thereupon the same were sold to said parties of the first part as trustees as aforesaid, except such leases and contracts as are excepted in the deed of the said Referee to the purchasers;

And whereas, thereafter, and after said sale had been duly confirmed according to law, the said Referee, by indenture bearing date the twenty-sixth day of April, A. D. one thousand eight hundred and seventy-eight, conveyed the said mortgaged premises, franchises and property to the said parties of the first part, as trustees as aforesaid, except certain leases and contracts in such conveyance mentioned, and the said Erie Railway Company by indenture bearing even date with the said last mentioned indenture, in accordance with the authority and direction in the said judgment contained, also conveyed the said mortgaged premises, franchises and property, with the exceptions aforesaid, to the said parties of the first part, as trustees as aforesaid, as will fully and at large appear upon reference to said two indentures;

And whereas, the said party of the second part has become a corporation duly organized under said chapter 430 of the Laws of the State of New York, passed May 11th, 1874, and any amendments thereof thereafter made, for the purpose of acquiring title to the said mortgaged premises, franchises and property sold as aforesaid, pursuant to the agreement hereinabove mentioned for the readjustment of the respective interests therein of the mortgage creditors and stockholders of the company owning such premises, franchises and property at the time of such sale;

Now, therefore, this Indenture witnesseth, that the said parties of the first part, in accordance with

the agreement in that behalf hereinbefore mentioned, and in execution thereof, and in accordance with the provisions of the laws of the State of New York hereinbefore mentioned, and in consideration of the premises, and of the sum of one dollar to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged,—Have granted, bargained, sold, assigned, transferred and set over, and by these presents *do* grant, bargain, sell, assign, transfer, set over and convey unto the said party of the second part, its successors and assigns forever, all and singular the property, franchises and estate, whether real, personal or mixed, and wherever situate, and whether within or without the State of New York, embraced and included in the judgment or decree of foreclosure and sale hereinabove mentioned, and therein and thereby authorized and directed to be sold, of which said property, franchises and estate, real, personal and mixed, the following is a general and the best practical description, that is to say: All and singular the railway lately of the Erie Railway Company, from and including Piermont, on the Hudson River, to and including the final terminus of the said Railway on Lake Erie, and the railway known as the Newburgh Branch, from Newburgh to the main line, and also all that part of the railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York, and also all other railways lately belonging to the Erie Railway Company, in the States of New York, Pennsylvania, and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the said company, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood, and supplies of every kind lately belonging or appertaining to the Erie Railway Company, and all the tolls, incomes, issues and profits arising out of the said property, and all rights to receive or recover the same; also all the estate, right, title and interest, terms, and remainder of terms, franchises, privileges and rights of action, of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, by the Union Railroad Company, by the Buffalo, New York and Erie Railroad Company, by the Buffalo, Bradford and Pittsburgh Railroad Company, by the Rochester and Genesee Valley Railroad Company, and by the Long Dock Company, and this description is to be understood as embracing and including all and singular the *choses in action*, stocks, bonds, book accounts, bills receivable and other evidences of indebtedness, leasehold estates, contracts, and other property in the said judgment mentioned or therein directed to be sold, together with any and all property of every kind and description by the Receiver in said action appointed acquired during his receivership, with the proceeds of the rents, profits, and issues of the said mortgaged premises, as in said judgment or decree set forth and therein directed to be sold by said Referee as a part of said mortgaged property and premises; *Being* and including the same, and all and every, the premises, franchises, and property which were sold and conveyed, or intended so to be, by said Referee, to said parties of the first part, by deed bearing date the twenty-sixth day of April, A. D. one thousand eight hundred and seventy-eight; and being and including all and every the premises, franchises, and property which were sold and conveyed, or intended so to be, by the said Erie Railway Company to said parties of the first part by deed bearing date the twenty-sixth day of April, A.D., one thousand eight hundred and seventy-eight, to which said deeds reference is now made for a more definite description of the said premises, franchises, and property; the same exceptions being made in this conveyance as in the conveyances last mentioned.

Together, also, with any and all property of every kind and description by the said parties of the first part, as trustee as aforesaid, acquired, with the proceeds of the rents, profits and issues of the said premises, franchises, and property hereby conveyed since the same were conveyed to said parties of the first part as aforesaid.

To have and to hold all and singular the above mentioned and described premises, franchises, and property hereby conveyed, or intended so to be, unto the said party of the second part, its successors and assigns, to its and their own proper use and behoof forever.

And subject, also, to all contracts heretofore made, or liabilities heretofore incurred, by Hugh J.

Jewett, Receiver, appointed in the action aforesaid, and to all his acts in connection with the said premises, franchises and property, so far as the said contracts or liabilities are still outstanding and unsatisfied, which said contracts, liabilities and acts, as well as all and every covenants and liabilities made or incurred by the said party of the first part hereto, in or by reason of the said deed executed by the said Referee as aforesaid, the said party of the second part hereby assumes, and from and against the same does hereby covenant to and with the said parties of the first part to indemify and save them and their heirs, executors and administrators, harmless.

And subject, also, to the lien and charge of all liens and incumbrances prior or superior to the mortgage herein above mentioned, and *expressly subject* to the performance on the part of the said party of the second part of all the contracts hereinabove mentioned which still remain executory, and also EXPRESSLY SUBJECT to all indebtedness of the said Receiver, as such, incurred or to be incurred by him during his Receivership, and remaining unpaid, which said indebtedness is by the judgment aforesaid charged upon the mortgaged premises as a lien prior to the mortgage hereinabove mentioned,—it being the true intent and meaning of these presents that all and singular the liabilities incurred by, or enforceable against, the said Receiver, of every nature and description, arising out of any act or acts done or omitted to be done by him, in good faith, as such liabilities now exist, or may at any time hereafter be established, or against any property hereby conveyed, or against him on account of such conveyance, do and shall constitute a lien and charge upon all and singular the premises hereby conveyed to the party of the second part, as fully to all intents and purposes as such liabilities, or any of them, would or could constitute such lien or charge upon the said premises, had the same, or any part thereof, continued to remain in the hands, possession and custody of the said Hugh J. Jewett, Receiver; and the said lien and charge hereby created and declared shall rank in order of priority before any future or subsequent lien or charge that may be created and imposed upon the premises, or any part thereof, by the said party of the second part, in any manner or form whatsoever, and the said lien or charge hereby created and declared, or any claims to any specific part or portion of the premises under or by virtue of title paramount, is hereby declared to be, and the same shall be, enforceable against the said party of the second part, in the same manner and to the same extent that the same might have been enforced against the said Hugh J. Jewett, if he had continued to be such Receiver, in actual possession of the premises.

In consideration whereof, the said The New York, Lake Erie and Western Railroad Company, party of the second part, does hereby covenant and agree to and with the said parties of the first part, their successors and assigns, that it will faithfully and truly assume, fulfill and perform on its part, each and every of the liabilities above referred to, whatever the form or nature thereof, and will pay off and discharge all the indebtedness or liabilities incurred, or to be incurred, by said Receiver, and charged upon the mortgaged premises as hereinabove set forth, and will fully indemnify and save harmless him, the said Receiver, from and against any such indebtedness or liabilities, and every part thereof, to whomsoever due, and from and against all cost, expense or charges which may arise or accrue out of or concerning the same. Also, that it will assume, and it does hereby assume, all the acts of the said Receiver done by him at any time in the due execution of his office, and all liabilities aforesaid, and will at all times indemnify and save harmless the said Hugh J. Jewett, Receiver, from and against all liability, damage, cost, and expense arising, or which may arise, in any manner aforesaid.

Also, That if any liability shall be in any manner established against the said Hugh J. Jewett individually, or as Receiver, for the payment of any claim or demand of whatever nature, or any part of any claim or demand, legally or equitably entitled to satisfaction out of any property or estate herein, and hereby granted or assigned; then, that the said party of the second part will at once *assume and pay* any liability so established, and will fully indemnify and save harmless the said Hugh J. Jewett therefrom, and from all loss, cost and damage which may arise or accrue out of or concerning the same; the true intent of this clause being to require the said party of the second part always to take care of and pay any sum or sums of money which the said Jewett has, as Receiver, become liable for or which

it may be established the said Hugh J. Jewett, as Receiver, ought to pay, or to have paid out of any property and estate which, by this indenture, are conveyed or assigned unto the said party of the second part, and as fully to protect the said Hugh J. Jewett, Receiver, as if he had retained in his own hands and possession funds and estate for the satisfaction of any and all such claims and demands.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, at the city of New York aforesaid, the day and year first above written, and the said party of the second part has caused its corporate seal to be hereunto affixed and these presents to be executed by its President and Secretary *pro tempore* the day and year first above written.

E. D. MORGAN, [SEAL.]
JOHN LOWBER WELSH, [SEAL.]
DAVID A. WELLS, [SEAL.]
The New York, Lake Erie and Western Railroad Co., by
HENRY G. STEBBINS, *President, pro tem.*
[SEAL] A. R. MACDONOUGH, *Secretary, pro tem.*

In presence of MAU'CE SPILLANE.

[Duly acknowledged and recorded.]

No. 18.

Mortgage—New York, Lake Erie and Western Railroad Co. to the Farmers' Loan and Trust Co.

AN INDENTURE made the fifth day of October, A. D. 1878, by and between the New York, Lake Erie and Western Railroad Company, a corporation created by and under the laws of the State of New York, party of the first part, and the Farmers' Loan and Trust Company, of the City of New York, a corporation duly created, organized and existing under the laws of the State of New York, Trustee, with full power and authority to accept and execute the trust hereinafter declared, imposed, and accepted, party of the second part.

WHEREAS, by an Act of the Legislature of the State of New York, passed April 24th, 1832, entitled "An Act to incorporate the New York and Erie Railroad Company," a corporation was created under the name of the New York an Erie Railroad Company, for the purpose of constructing, owning, and operating a line of railroad for he carriage of freight and passengers between the City of New York and Lake Erie in the said State, and by the said Act and by other Acts of the said Legislature, and by certain Statute Laws of the State of Pennsylvania, the said company was authorized to construct and operate a certain part of its line of railroad through the counties of Pike and Susquehanna in the State of Pennsylvania, and did subsequently lawfully acquire certain franchises, privileges, powers, leasehold estates, rights and interests in the State of New Jersey.

AND WHEREAS, afterwards, in or about the year 1859, such proceedings were had that certain mortgages theretofore made by the said New York and Erie Railroad Company were foreclosed, and all and singular the franchises and property of the said company sold; and the Erie Railway Company, a corporation duly created, organized, and established, under and by virtue of the laws of the said State of New York, acquired, succeeded to, and became lawfully possessed of all and singular the franchises, property, rights, and privileges of the said New York and Erie Railroad Company, subject, however, to certain prior mortgages created by that company to secure its bonds, of which there are now outstanding the following amounts or thereabout, that is to say, so-called First Mortgage Bonds to the amount of $2,483,000; so-called Second Mortgage Bonds, amounting to $2,174,000; so-called Third Mortgage Bonds, amounting to $4,852,000; so-called Fourth Mortgage Bonds, amounting to $2,937,000; and so-called Fifth Mortgage Bonds, amounting to $709,500.

AND WHEREAS, afterwards, a lien was created by the Buffalo Branch of the Erie Railway and the Erie Railway Company by a mortgage of the railroad running from Hornellsville, in Steuben County,

to Attica, in Wyoming County, in the State of New York, together with all the property, franchises, interests, and appurtenances appertaining to the said railroad, known as the Buffalo Branch of the Erie Railway Company, to secure the payment of the bonds therein mentioned, which bonds are now outstanding to the amount of $182,600, as by reference to the said mortgage, bearing date the 1st day of July, 1861, on record, will more fully and at large appear.

AND WHEREAS, afterwards, on the 1st day of September, 1870, the said Erie Railway Company, then being so possessed as aforesaid of the said franchises, property, rights and privileges, and engaged in operating its line of railway, branches, and leased lines, and being thereto duly authorized by law, did execute and deliver to the Farmers' Loan and Trust Company, Trustee, a mortgage, hereinafter called the First Consolidated Mortgage, of all and singular the railway and franchises of the said Erie Railway Company, as by the said mortgage will fully and at large appear, to secure a series of the bonds of such company of even date with the said mortgage, amounting in the aggregate to $30,000,000, whereof bonds to the amount of 18,554,000 were, by the terms of the said mortgage, to be reserved, and were reserved by the said trustee, the Farmers' Loan and Trust Company, to be exchanged from time to time for the aforesaid bonds of the New York and Erie Railroad Company, and except in so far as such exchange has actually been made, are still so held by the said trustee for the purposes of such exchange.

AND WHEREAS, afterwards, to wit, on the 4th day of February, 1874, the said Erie Railway Company did execute a further Deed of Trust, by way of mortgage, to the said Farmers' Loan and Trust Company of the City of New York (hereinafter called the Second Consolidated Mortgage), of all and singular its said franchises, railway, property, rights, and privileges, as will more fully and at large appear by the said mortgage, reference thereto being had, to secure bonds of the said Erie Railway Company, therein particularly described, to the amount in the aggregate of $40,000,000, including $10,000,000 so-called Gold Convertible Bonds, of which bonds, including both classes, bonds to the amount in the aggregate of $25,000,000 are subject to the provisions contained in the plan and agreement for reorganization hereinafter mentioned, and the residue have never been issued.

AND WHEREAS, default having been made in the payment of interest on the bonds so as aforesaid secured by the said Second Consolidated Mortgage, an action was brought thereon in the Supreme Court of the State of New York, in the City and County of New York, on or about the 15th day of June, 1875, for the foreclosure of the said mortgage, in which action judgment of foreclosure and sale was duly entered in the said Supreme Court on or about the 7th day of November, 1877, to which judgment, remaining of record in the said Court, reference is had.

AND WHEREAS, afterwards, on the 24th day of April, 1878, under and in pursuance of the said judgment, the said mortgaged premises and every part thereof were, subject to a lien for the Receiver's indebtedness, sold at public auction, and at such sale the same and every part thereof were purchased by, and afterwards, on the 26th day of April, 1878, were duly conveyed to Edwin D. Morgan, John Lowber Welsh and David A. Wells, trustees, as hereinafter more particularly set forth, and the said purchasers did thereafter, on or about the 27th day of April, 1878, proceed in due conformity with law to organize the said The New York, Lake Erie and Western Railroad Company, party hereto of the first part, and did duly file in the office of the Secretary of State for the State of New York, the Certificate of Incorporation required by law in such cases to be made and filed, and did, on the day and year aforesaid, duly convey to the party of the first part, the said The New York, Lake Erie and Western Railroad Company, by deed under their hands duly acknowledged, all and singular the premises so as aforesaid purchased.

AND WHEREAS, such proceedings were in due course had in the premises, in the proper courts of the respective States of New Jersey and Pennsylvania, that all and singular the property and franchises included in the mortgage so foreclosed as aforesaid, that is to say, all and singular the property and franchises of every kind and description of the said Erie Railway Company, situate within the said respective States of New Jersey and Pennsylvania, became and were absolutely confirmed to and vested in the said

party hereto of the first part, and its corporate existence, franchises, rights and privileges, became and were fully established and recognized in the said States respectively, under and by virtue of the laws thereof respectively, all of which proceedings so had in the State of New Jersey remain of record in the Court of Chancery of that State; to which reference is had, and all of which proceedings so had as aforesaid in the State of Pennsylvania, remain of record in the Court of Common Pleas for Pike County in the said State, to which reference is had.

AND WHEREAS, the mortgaged premises aforesaid were so purchased as aforesaid by the said Edwin D. Morgan, John Lowber Welsh and David A. Wells, as trustees under and in pursuance of a certain plan and agreement for the reorganization of the said Erie Railway Company, made in conformity with the laws of the State of New York, in such case made and provided, which said plan and agreement is fully and at large set forth in the aforesaid Certificate of Incorporation filed in the office of the said Secretary of State for the State of New York, to which reference is had.

AND WHEREAS, by the 4th paragraph of the said plan and agreement, it was provided that for certain expenses, payments and indebtedness therein mentioned, provision might be made by raising the required amount, and charging the same upon the company party hereto of the first part, and its property, as a prior charge thereon.

AND WHEREAS, it is agreed that the prior charge Bonds to be issued by the said company, party of the first part, in respect of the said expenses, payments and indebtedness under the 4th paragraph of the said plan and agreement, or of any indebtedness of the Receiver (subject to the lien for which the said railway and premises were sold as aforesaid), shall not exceed the limit of $2,500,000, and shall be of the tenor set out in Schedule A to this indenture.

AND WHEREAS, the said plan and agreement provides for the issue and delivery by the party of the first part to the said trustees in the said plan and agreement designated, of a certain series of bonds, amounting in the aggregate to $25,000,000, in part payment for the aforesaid franchises and property, such bonds to be known and designated as New Second Consolidated Mortgage Bonds, 24,000 bonds of which will be each for the sum of $1,000 (as an equivalent of £200 sterling), numbered from 1 to 24,000 inclusive, and 2,000 bonds of which will be each for the sum of $500 (as an equivalent of £100 sterling), numbered from 24,001 to 26,000, inclusive, and each bond will be of the tenor (the $500 bonds differing only in amount) set out in Schedule B to this indenture.

AND WHEREAS, the said plan and agreement further provides for the issue and delivery by the party of the first part, to the trustees in the said plan and agreement designated, of a certain other series of bonds, amounting in the aggregate to $8,597,400, in further payment for the aforesaid franchises and property, to be known and designated as Second Consolidated Mortgage Funded Coupon Bonds, and which will be issued in such denominations as are necessary to fund and provide for the deferred or postponed coupons of the Second Consolidated Bonds aforesaid, in accordance with said plan and agreement, and each funded coupon bond part of the said $8,597,400 will be in the form (except as to difference of denomination) set out in Schedule C to this indenture.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the said company, party of the first part, in consideration of the premises and of one dollar to it in hand paid, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, set over, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, assign, set over, release, convey and confirm unto the party of the second part, trustee, and to its successor or successors in the trust herein and hereby created and declared, all the right, title and interest which the said company, party of the first part, now has or may at any time hereafter acquire in or to all and singular the railway of the party of the first part, from and including Piermont, on the Hudson River, to and including the final terminus of the said railway on Lake Erie, and the railway known as the Newburgh Branch, from Newburgh to the main line; and also all that part of the railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New

York; and also all other railways belonging to the party of the first part, in the States of New York, Pennsylvania and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the said company, and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to the party of the first part, and all tolls, income, issues and profits arising out of the said property, and all rights to receive or recover the same; also all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action, of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, by the Union Railroad Company, a corporation existing under the laws of the State of New Jersey; by the Buffalo, New York and Erie Railroad Company, a corporation existing under the laws of the State of New York; by the Buffalo, Bradford and Pittsburgh Railroad Company, or the Pennsylvania and Erie Coal and Railway Company, a corporation existing under the laws of the State of New York and the State of Pennsylvania; by the Rochester and Genesee Valley Railroad Company, a corporation existing under the laws of the State of New York; by the Long Dock Company, a corporation existing under the laws of the State of New Jersey; by the Avon, Geneseo and Mount Morris Railroad Company, a corporation existing under the laws of the State of New York; by the Goshen and Deckertown Railroad Company, a corporation existing under the laws of the State of New York; by the Hoboken Land and Improvement Company, a corporation existing under the laws of the State of New Jersey; by the Jefferson Railroad Company, a corporation existing under the laws of the State of Pennsylvania; by the Montgomery and Erie Railroad Company, a corporation existing under the laws of the State of New York; by the Newburgh and New York Railroad Company, a corporation existing under the laws of the State of New York; by the New York and Fort Lee Railroad Company, a corporation existing under the laws of the State of New Jersey; by the Northern Railroad Company of New Jersey, a corporation existing under the laws of the State of New Jersey; by the Paterson and Newark Railroad Company, a corporation existing under the laws of the State of New Jersey; by the Pennsylvania Coal Company, a corporation existing under the laws of the State of Pennsylvania; by the Newark and Hudson Railroad Company, a corporation existing under the laws of the State of New Jersey, and by the Suspension Bridge and Erie Junction Railroad Company, a corporation existing under the laws of the State of New York.

And also all the estate, right, title and interest of the party of the first part in and to certain real estate, situate in Hudson County, in the State of New Jersey, and known as the Weehawken Docks property, certain other real estate situate in Hudson County, in the State of New Jersey, known as the Penhorn property, and to two certain other parcels of real estate situate in the County of Passaic, in the State of New Jersey, and known respectively as the Post farm and the Fredericks farm. And also to a certain parcel of land lying west of the Bergen Tunnel, in Hudson County, State of New Jersey, known as the Laundry property. And also all other real estate of the party of the first part, situate in the State of New Jersey, of every kind and description, and wherever in the said State the same may be situate. Also a tract of land, being about four acres, situate in the township of Texas, County of Wayne, in the State of Pennsylvania. Also all the estate, right, title and interest of the said party of the first part in and to certain real estate in the city of New York, situate on the northwest corner of Eighth Avenue and West 23d Street, in the 16th Ward of said city, and known as the Grand Opera House, and also the premises Number 331 West 231 Street, and certain leasehold lands and tenements situate on West 23d Street, in said city of New York, known as Numbers 309, 311, 313, 315, 317, 319, 321, 323 and 347 on the said street. Also certain other leasehold lands and tenements, situate on West 24th Street, in said city, and known as Numbers 302, 304, 306, 308, 310, 312, 314, 318, 320, 322, and 334½ on the said street.

And also certain leasehold lands with the buildings thereon erected, situate in the city of New York, being the block bounded by Duane, Reade, West and Washington Streets, in the 5th Ward.

And also all the estate, right, title and interest of the said party of the first part of, in and to certain piers, bulkheads and water fronts in the said city of New York, that is to say: Piers 29, 30, 31 and 32 North River, with bulkheads between Piers 30 and 31, 31 and 32, and half the bulkhead between Piers 32 and 33; also the pier at the foot of West 23d Street, and the bulkhead between 22d and 23d Streets. Also, on the East River, Piers 7 and 8, and the bulkhead between them.

And also, all the estate, right, title and interest of the party of the first part in the following corporations, that is to say: The Long Dock Company, a corporation under the laws of the State of New Jersey; the Newark and Hudson Railroad Company; the Paterson, Newark and New York Railroad Company, being respectively corporations under the laws of the said last-mentioned State; the Jefferson Railroad Company, a corporation under the laws of the State of Pennsylvania; the Buffalo, New York and Erie Railroad Company, a corporation under the laws of the State of New York; the Buffalo, Bradford and Pittsburgh Railroad Company, or the Pennsylvania and Erie Coal and Railway Company, a corporation under the laws of New York and of Pennsylvania; the Suspension Bridge and Erie Junction Railroad Company, a corporation under the laws of the State of New York; the roads known respectively as the Honesdale Branch and the Hawley Branch of the Erie Railway Company, lying respectively in the State of Pennsylvania; the Erie International Railway Company, a corporation under the laws of the State of New York; the Hillside Coal and Iron Company, a corporation under the laws of the State of Pennsylvania; the National Stock Yard Company, a corporation under the laws of the State of New Jersey; the Northwestern Mining and Exchange Company, a corporation under the laws of the State of Pennsylvania; the Towanda Coal Company, a corporation under the laws of the State of Pennsylvania; the Bergen County Railroad Company, a corporation under the laws of the State of New Jersey; the Erie and Atlantic Sleeping Coach Company; the Pavonia Ferry Company; the Pavonia Horse Railroad Company; the United States Express Company; the Union Dry Dock Company, and the Union Steamboat Company; intending hereby to convey to the party of the second part under and by virtue of the afore said description all and every right, title or interest of the party of the first part, in or to the premises above mentioned and described, whether as lessees or holders of the stock or bonds of the said corporations, associations or organizations, or however such interest of the party of the first part may be regarded in law or equity as subsisting and inhering in and to the aforesaid premises or any part thereof; it being the true intent and meaning of these presents that the said party of the first part shall and does convey to the said party of the second part all and all manner of franchises of every kind and description, however derived and wherever situated, all and all manner of real estate and interests therein, wherever such real estate may be situated, and all and all manner of mixed and personal property of whatever nature or description the same may be at the date of these presents owned or possessed by the said party of the first part, or that may at any time hereafter, during the continuance of this trust, be acquired by the said party of the first part.

And also all choses in action of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and account, of every kind and description, all papers, maps, inventories, and documents in any wise referring or relating to the property and franchises hereby conveyed. And also all franchises and property, and all personal rights or interests in franchises or property of every kind and description, real, or mixed, and wherever the same may be situate, that may at any time after the date of this Indenture be acquired by or for the said party of the first part, all of which it is hereby covenanted shall enure by way of accretion to the benefit and advantage of the said party of the second part, trustee, and by way of further and better security, subject, however, to all and singular the hereinbefore mentioned and recited liens and incumbrances upon the premises herein and hereby conveyed.

TO HAVE AND TO HOLD all and singular the above-described premises to the said party of the second part, trustee, its successor or successors in the trust hereby created, to the only proper use and behoof of the said trustee, its successor or successors, in trust, nevertheless, for the uses and purposes hereinafter expressed, to wit:

Article First.—To secure the payment of the bonds of the party of the first part, not exceeding the limit of $2,500,000, to be issued under the provisions of the said 4th paragraph of the said plan and agreement, or in respect of or to represent any indebtedness of the Receiver (subject to the lien for which the said railway and premises were sold as aforesaid), which bonds it is hereby agreed and declared shall rank in priority of lien to any other bonds secured by and to be created under the provisions of this mortgage, and provided always that any bonds purporting to be created under the provisions of this article shall (within the aforesaid limit of $2,500,000) be good and valid, and be entitled to rank as aforesaid, without the purchaser or holder thereof having to inquire into the expenses, payments, or indebtedness in respect of which the same may have been issued, the intention being that such bonds shall, by the mere fact of their creation and issue by the party of the first part be good and valid, and be entitled to rank as aforesaid in the hands of any *bona fide* holder, provided also that all bonds to be created and issued under this article shall not have more than thirty years to run from their respective dates, and shall contain a provision for an accumulative sinking fund at the rate of not less than $100,000 per annum, being taken out of such moneys as would otherwise from time to time be available for the payment of dividends on the preference or other stock of the said party of the first part, and applied in redemption of the bonds to be created and issued under this article, either by purchase in the market or by drawings by lot, at the discretion of the party of the first part, or as such party shall from time to time determine.

Article Second.—To secure the payment according to their tenor of the other bonds of the party of the first part, hereinbefore described, that is to say, the said New Second Consolidated Mortgage Bonds, and the said Second Consolidated Mortgage Funded Coupon Bonds, both of which classes of bonds it is hereby agreed and declared shall rank in the order of their declared priority next after the bonds to be created and issued under the said Article First, and *inter se* in the same order of priority.

Article Third.—Until default shall be made in respect of something herein required to be done or performed by the party of the first part, or until by the express provisions of this Indenture a right of entry shall have accrued to the party of the second part, the party of the first part shall be permitted to possess, manage, operate, and enjoy all and singular the mortgaged premises, including the said railway and railways, with their appurtenances and equipments, and to take and use the rents, incomes, profits, tolls, and issues thereof, in the same manner and to the same effect as if this Indenture had not been made.

Article Fourth.—And whereas, certain parts of the property embraced in this Indenture are not inseparably connected with the franchises and line or lines of railway herein and hereby conveyed to the party of the second part in trust, and may, it is believed, from time to time, as occasion requires and opportunity offers, be sold or exchanged to the advantage of the beneficiaries under this Indenture, as well as to the advantage of the party of the first part, due provision being made for the payment of the proceeds of sale to the party of the second part, trustee, and for their proper application, so that the security hereby created shall not be impaired by such sale and disposition, therefore there is hereby and herein expressly reserved to the party of the first part power to sell or exchange from time to time, as such sale or exchange may appear to the said party of the first part to be judicious and advantageous, all such property so as aforesaid embraced in this Indenture, and not so intimately connected with the franchises and railways embraced herein as to be inseparable therefrom without prejudice to the efficient operation and working of the said railway or railways, and the propriety of any such sale or exchange shall be determined by a vote of the Board of Directors of the party of the first part; but every such sale in order to be valid must have the approval of the party of the second part, trustee. Such approval shall be given upon the request of the party of the first part, unless the party of the second part, trustee, shall discover just cause for withholding the same, and the party of the second part shall not be in any manner liable for any error of judgment in giving such approval. The proceeds of all property so sold or exchanged shall be used or employed in the payment or reduction of the interest or principal of the

indebtedness secured hereby, or in the improvement of the premises hereby conveyed, and shall constitute in the hands of the party of the second part a separate and distinct trust fund for such purposes or some of them; but the party of the second part shall pay over to the party of the first part so much of the said funds as the Board of Directors of the party of the first part shall from time to time state that they require for the execution of improvements to be specified by them of the premises hereby conveyed, and shall not be answerable for the non-application or misapplication of so much as shall be so paid over.

Article Fifth.—If at any time the party of the first part shall not be able to pay in full as it matures the interest upon any of the Bonds intended to be secured by this Indenture, but shall be able to pay a part of such interest, such part interest may and shall be paid in such manner and under such regulations as the Board of Directors of the said party of the first part may prescribe; but each due coupon must be paid in full before part payment of any coupon subsequently maturing, and in case default shall occur in the payment of any such interest in full as it matures and becomes payable, then and in that case, and during the existence of such default, a full and just account of all the receipts, income, expenses and net earnings of the party of the first part shall be open to the inspection of the party of the second part at all reasonable times.

Article Sixth.—In case default in the payment of interest shall be made and shall continue until on each of six successive due dates of coupons some interest on the bonds secured hereby shall be in default, and if, as a further, express and cumulative condition, the holders of at least one-half of the bonds secured hereby shall join in a demand requiring the party of the second part so to do, the said party of the second part shall have the right to enter upon all and singular the mortgaged premises, and every part thereof, and to possess, operate, use, and enjoy the same, and upon request being made, the party of the first part will immediately surrender possession of all and singular the mortgaged premises to the party of the second part. Also, in the event of such default and of such demand on the part of the holders of at least one half of the bonds as aforesaid, but not otherwise, the party of the second part may apply to any Court or Courts having proper jurisdiction in the premises for a foreclosure and sale of the mortgaged premises, and for the appointment in the meantime of a Receiver of the mortgaged premises under this Indenture, or (as an alternative of entry under the right in that behalf hereinbefore given) for the appointment of such a Receiver without applying for a foreclosure or sale of the mortgaged premises, and in either case the party of the second part shall have the right to nominate and designate the person to be appointed Receiver, and so far as lawfully may be done, the party of the second part shall have the right to control and direct the general course of the administration of the mortgaged premises by and on the part of such Receiver. In the event of such right of foreclosure and sale accruing for non-payment of interest, immediately thereupon the whole amount of the principal of the bonds secured by this Indenture shall become due and payable, and this provision is expressly declared not to be in the nature of a penalty for a breach of condition, or for the non-payment of interest, but to be a provision which, having regard to the nature of the mortgaged premises and the impossibility of a sale thereof in parcels, without serious prejudice to all interests, and for other reasons, is essentially necessary to effectuate the objects and purposes of the parties hereto.

Article Seventh.—If at any time during the currency of the bonds secured by this Indenture there should be, in the opinion of the party of the second part, imminent danger of prejudice to the mortgaged security growing out of any proceedings at law or in equity against the party of the first part, on the part of any creditor or other person, whatever the nature of such proceedings may be, then and in that case the party of the second part shall have the right to demand the immediate surrender of the possession of all and singular the mortgaged premises and every part thereof, whether the party of the first part be or be not in default in the payment of interest upon any part of the mortgaged debt, and the party of the first part will upon such demand make such surrender and permit the party of the second part to enter by its servants or agents, take possession and control of, and operate and manage all and singular the mortgaged franchises and premises, and such possession shall continue until in the opinion of the

party of the second part possession of the mortgaged premises may be safely and without danger of prejudice to the mortgage security restored to the party of the first part. And in the event that a right of entry shall accrue under the provisions of this article, the party of the second part shall have the same right to apply for the appointment of and to nominate a Receiver as in the last preceding article provided for; but such receivership shall continue only so long as the danger of prejudice to the mortgaged security shall continue, and shall cease whenever, in the opinion of the party of the second part, possession of the mortgaged premises may be safely restored to the party of the first part.

Article Eighth.—If the party of the second part shall enter upon the premises, and take possession, control, and management thereof, under and by virtue of either of the preceding articles, the party of the second part shall apply and administer the net revenue and income from the mortgaged premises during such possession (due regard being had to the superior obligation of prior liens), the discharge and satisfaction of interest or interest and principal secured by this Indenture, as the same may become due and payable, and in due order of priority. During such possession, occupation, control, and management, the party of the second part shall only be liable for the exercise of good faith and reasonable diligence, and all expense, loss and damage of every kind and nature growing out of such possession, control and management, and not due to the absence of good faith or reasonable diligence on the part of the party of the second part, shall to the extent that any liability is incurred thereby constitute a charge upon the mortgaged premises exclusively. The party of the second part, during such possession, control and management, shall have full right, power and authority to operate and control the railways hereby mortgaged, and to use, occupy and possess the mortgaged premises generally according to the rules of good railway management and good husbandry, and may enter into any and all contracts proper, ordinary and usual in such cases and charge the same as a lien upon the mortgaged premises, and may issue certificates of indebtedness for liabilities of every kind which it may be found needful and judicious to incur, which certificates shall constitute a lien upon the premises prior to the bonds secured hereby, and the party of the second part generally may do and perform all things in the premises connected with the control and management of the mortgaged property which the party of the first part itself might do and perform under and by virtue of its powers and franchises and of the Statute Laws of the State of New York, had the party of the first part remained in undisturbed possession and control of the premises.

Article Ninth.—If a Receiver of the mortgaged premises shall be appointed under the provisions of this indenture, all the expenses incident to such appointment and all the expenses of such receivership, as well as all the expenses incident thereto, and generally in the execution of this trust incurred by the party of the second part, and all lawful obligations of the said Receiver, shall constitute a lien upon the mortgaged premises, prior to the lien of any of the bonds secured by this Indenture. Such Receiver shall have power to enter into all contracts and obligations, and do all other things ordinarily incident to good railroad management, in as full and ample a manner as such power would have been possessed by the party of the first part, had the party of the first part remained in possession of the mortgaged franchises and premises. The net income of the mortgaged premises shall be applied by the Receiver, under the direction of the Court, due regard being had to the superior obligation of the prior liens, hereinbefore specified, to the payment of interest and principal of the bonds secured hereby, in the order of priority hereinbefore declared.

Article Tenth.—The right of action, under this Indenture, is vested exclusively in the party of the second part, trustee, its successor or successors, and under no circumstances shall any individual bondholder, or number of individual bondholders, have any right to institute an action on or under this Indenture for the purpose of enforcing any remedy herein and hereby provided, and all actions and proceedings for the purpose of enforcing the provisions of this Indenture shall be instituted and conducted by the party of the second part, trustee, its successor or successors, according to their sound discretion, without any interference on the part of any individual bondholder or bondholders, until and unless the holders of at least one-half of all the bonds secured hereby shall unite in requesting the party of the

second part, trustee, its successor or successors, to do or refrain from doing any particular act or acts, or to pursue or refrain from pursuing any particular line of conduct or policy connected with the enforcement of this security; and in case of such request the party of the second part, trustee, its successor or successors in the trust hereby created, shall conform its action and policy in regard to the enforcement of the security of this Indenture to such request or requests, so far as may lawfully be done; it being hereby expressly provided and declared that the majority of the holders of bonds secured by this Indenture, when acting in concert, shall have the absolute right to control the time, manner and mode of lawfully enforcing the security created by this Indenture.

Article Eleventh.—It is hereby declared that the words "net earnings" as used in this Indenture shall be construed to mean such surplus of the earnings of the said railway or railways, and mortgaged premises generally, as shall remain after paying all expenses of operation, care and management (including all taxes, assessments and payments in respect of incumbrances prior in lien to these presents) of building, repairing or replacing the said railway or railways, their appurtenances and equipments, so that the same shall be in good condition, and of providing such additional equipments as the said company, party of the first part, shall deem necessary for the business of the said railway or railways.

Article Twelfth.—If at any time for any reason it shall become necessary or proper to remove, or designate and appoint a successor or successors to, the party of the second part in this trust, the voting trustees, for the time being, provided for in the aforesaid plan of foreclosure, shall have the right in their discretion to make such removal, and to designate and appoint such successor or successors by an instrument in writing under their hand, duly certified and delivered to the party of the first part, and thereupon, and by the mere fact of such appointment, such successor or successors shall become fully vested with all rights, powers and privileges possessed by the party of the second part, under and by virtue of these presents, and subject to all the duties and liabilities of the party of the second part, trustee; and if the said voting trust shall have terminated, then such designation and appointment shall be made by the party of the first part.

Article Thirteenth.—In case it should become necessary to institute proceedings for the foreclosure and sale of the mortgaged premises, the party of the second part, its successor or successors, shall aid, promote and encourage, in all lawful ways, any plan for the foreclosure and reorganization of the mortgaged premises, suggested for the benefit and advantage of the holders of bonds secured hereby, that it may deem most beneficial for such bondholders, and in case of a sale, in pursuance of such proceedings, the same shall be conducted under the general control and management of the party of the second part, trustee, its successor or successors, and the said party of the second part, its successor or successors, shall receive and distribute the proceeds of sale, except as otherwise provided in and by the plan and agreement of foreclosure and reorganization, in pursuance of which such sale may be had, it being understood and agreed that the said trustee, its successor or successors, shall be guided and controlled in all proceedings for the foreclosure and reorganization of the mortgaged premises by the terms and provisions of any scheme of foreclosure and reorganization which shall receive the assent of the holders of a majority of the respective classes of bonds defined in articles first and second of this Indenture.

Article Fourteenth.—The party of the first part hereby covenants and agrees to and with the said trustee, party of the second part, that it will from time to time, and at all times, upon reasonable request, make, execute, acknowledge and deliver, at its own expense, all such further acts, deeds, conveyances and assurances in law, for the better assuring unto the said trustee and its successor or successors, in the trust hereby created, upon the trusts, and for the purposes herein expressed or intended, all and singular the franchises, railways, property, real, personal and mixed, rights and privileges hereby mortgaged or conveyed in trust, or appearing, purporting or intended so to be, now owned or possessed, or vested in the said party of the first part, or that may hereafter be acquired or vested in the said party of the first

part, as by the said party of the second part, or its counsel, learned in the law, shall be reasonably devised, advised or required.

Article Fifteenth.—Holders of bonds secured by this Indenture shall be entitled to one vote for each one hundred dollars of such bonds, held by them, exclusive of interest, at all Meetings of Shareholders, and on all affairs of the Corporation, under such regulations as to registry and so forth as the Company, party of the first part, may prescribe.

Article Sixteenth.—Any of the bonds secured hereby may, at any time, on payment of the fee established therefor, be registered under such regulations as the Company, party of the first part, may establish, in the name of the holder, or the name of any nominee or nominees on the books of such company at New York, or such other place or places of registration as such Company may designate, and such registration may from time to time, on complying with such regulations, be extinguished and cancelled, and again renewed; but after such registration, and while the same remains unextinguished and uncancelled, such bonds can only be transferred by the registered holder, his duly authorized agent or lawful successor in title, by a proper entry of transfer on the books of the Company, and an endorsement of such transfer upon the bond. Due extinguishment and cancellation of registration stamped or endorsed upon the bond by the Company, will restore the negotiability thereof; but this article shall apply to the principal of the bonds only, and not to the coupons.

Article Seventeenth.—In the execution of the bonds and coupons secured by this Indenture, the signatures of the proper parties engraved thereon, or impressed thereon, by or under their immediate direction and control respectively, by an appropriate stamp, bearing their respective signatures, shall be regarded and treated as in all respects, in fact and in law, equivalent to a manual signing of the said bonds and coupons, except that the signature of the Secretary of the Company, party of the first part, and that of the Secretary of the Voting Trustees to the bonds, must be in their own proper handwriting respectively.

Article Eighteenth.—If the party of the first part shall well and truly pay the sums of money by the said bonds secured hereby, and the coupons thereto attached required to be paid by it, and shall well and truly keep and perform all the covenants, agreements, and undertakings herein and hereby assumed and required to be kept and performed according to the true intent and meaning of these presents, then and in that case the estate, right, title and interest of the said party of the second part, trustee, or its successor or successors, shall cease, determine, and become void.

IN WITNESS WHEREOF, the party of the first part has hereunto caused its corporate seal to be affixed and these presents to be attested by its President and Secretary, and in testimony of its acceptance of the trusts herein created and conferred the said Trustee, party of the second part, has hereunto caused its corporate seal to be affixed, and these presents to be attested by its President and Secretary, the day and year first above written.

THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY,

[SEAL.] *By* H. J. JEWETT, *President.*

Attest: A. R. MACDONOUGH, *Secretary.*

THE FARMERS' LOAN & TRUST COMPANY,

[SEAL.] *By* R. G. ROLSTON, *Pres't.*

Attest: GEO. P. FITCH, *Sec'y.*

(Duly acknowledged and recorded.)

SCHEDULE A.—UNITED STATES OF AMERICA, STATE OF NEW YORK.

$1,000 (£200)

The New York, Lake Erie and Western Railroad Company Reorganization First Lien Bond.

KNOW ALL MEN BY THESE PRESENTS, that the New York, Lake Erie and Western Railroad Company acknowledges itself indebted unto Edwin D. Morgan, or to the registered holder, or if unregistered to the bearer hereof, in the sum of 1,000 dollars gold coin of the United States of America, which the said

Company promises and agrees to pay in like gold coin or in sterling money, at the rate of four shillings to the dollar, to the registered holder, or if unregistered to the bearer hereof, on the 1st day of December, A. D. 1908, at the office of the said Company, in the City of New York, or the Agency of said Company in the City of London, and also to pay, until repayment, in like gold coin or sterling money, at the rate aforesaid, interest at six per centum per annum, to be computed from the first day of May, which will be in the year 1879, half yearly, on the first days of May and November in each year, at the office of the Company, in the City of New York, or at the holder's option, at the agency of the Company in London, on the presentation and surrender of the annexed coupons payable to bearer as they severally become due.

The holder of this bond may, at any time, on payment of the fee established therefor, have the same registered, under such regulations as the Company may establish, in his name, or the name of any nominee or nominees, on the books of the Company at New York, or such other place or places of registration as the Company may designate, and such registration may from time to time, on complying with such regulations, be extinguished and canceled, and again renewed; but after such registration, and while the same remains unextinguished and uncanceled, this bond can only be transferred by the registered holder, his duly authorized agent or lawful successor in title, by a proper entry of transfer on the books of the Company, and an endorsement of such transfer upon the bond. Due extinguishment and cancellation of registration stamped or endorsed upon the bond by the Company, will restore the negotiability thereof.

This Bond is issued under and in pursuance of the plan and ageement of foreclosure and reorganization of the Erie Railway Company set forth in the Certificate of Incorporation of the obligor herein, The New York, Lake Erie and Western Railroad Company, on file in the office of the Secretary of State of the State of New York, to which reference is had, and is one of a series amounting in the aggregate to $2.500,000, and consisting of 2,500 bonds, each for the sum of $1,000 (as an equivalent of £200 sterling), and numbered from "1" to "2,500" inclusive, all of which constitute a first lien under a certain Indenure of Mortgage or Deed of Trust duly executed and recorded and delivered by the obligor to the Farmers' Loan and Trust Company of the City of New York, Trustee, securing also, subject to such prior lien, certain other bonds of the obligor known as the New Second Consolidated Mortgage Bonds, and also certain other bonds of the obligor known as the Second Consolidated Mortgage Funded Coupon Bonds, and conveying to the said Trustee in Trust all the franchises, railways, appurtenances, terms, estates, rights or interests in railways, including all branches and leased lines, also all the real, personal or mixed property of the obligor herein of every kind and description, and all railways, franchises and property, real, personal or mixed, that may be at any time acquired by the obligor herein, subsequent to the date of the said Indenture of Mortgage, as by the said Indenture of Mortgage in the possession of the said Trustee and duly recorded, will fully and at large appear, reference thereto being had. But subject nevertheless to the existing priority of lien of certain outstanding bonds of the New York and Erie Railroad Company and the provisions of the several mortgages securing the same, viz. : First Mortgage Bonds amounting to $2,483,000; Second Mortgage Bonds amounting to $2,174,000; Third Mortgage Bonds amounting to $4,852,000; Fourth Mortgage Bonds amounting to $2,937,000; and Fifth Mortgage Bonds amounting to $709,500. And also subject to the priority of the outstanding Mortgage Bonds given by the Buffalo Branch of the Erie Railway Company upon that part of the said Railway which is between Hornellsville, in Steuben County, and Attica, in Wyoming County, New York, amounting in the aggregate to $182,600. And also subject to the existing prior lien of the outstanding bonds secured by the First Consolidated Mortgage of the Erie Railway Company, amounting to $16,656,000, and the Coupon Bonds issued by the obligor herein under and in pursuance of the said plan and agreement of foreclosure and reorganization for and in respect of accrued and funded interest on the said First Consolidated Mortgage Bonds, amounting in the aggregate to not exceeding $3,718,100.

The obligor herein will set aside annually the sum of $100,000, or so much thereof as would otherwise be applicable to the payment of dividends on its preferred and common stock, to constitute a sinking fund

to be applied in redemption of this series of bonds by purchase in the market or drawing by lot, as the obligor may determine.

This Bond shall not become obligatory until authenticated by a certificate thereon signed by the said Farmers' Loan and Trust Company, Trustee, and countersigned by the Secretary of the Voting Trustees mentioned in the said Certificate of Incorporation.

In testimony whereof, the said New York, Lake Erie and Western Railroad Company has caused its corporate seal to be hereto affixed, and the same attested by the signatures of its President and Secretary, and the coupons annexed by the name of the said Secretary, on this fifth day of October, in the year of our Lord one thousand eight hundred and seventy-eight.

President.
Secretary.

(Countersigned)
Secretary of Voting Trustees.

Coupon.

No....

THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY promises to pay to the bearer hereof, at the office of the company in New York, or at his option, at the Agency of the Company in London, on the day of 18 ,
Dollars (gold), or its equivalent in sterling, at four shillings to the dollar, being interest for the preceding half year on the Company's Reorganization First Lien Bond, No.

$..... £..... *Secretary.*

[The form of certificate to be endorsed upon the bonds aforesaid by the Farmers' Loan and Trust Company, party of the second part, Trustee, shall be as follows:]

The Farmers' Loan and Trust Company hereby certifies that this Bond is one of the series of bonds in the body thereof mentioned and described, and is secured in the manner therein stated by a Mortgage of the New York, Lake Erie and Western Railroad Company to the said Farmers' Loan and Trust Company, bearing date the 5th day of October, 1878, duly recorded.

[Each of the said Bonds shall bear the following endorsement, to indicate the right of the holder thereof to vote thereon, that is to say:]

This Bond entitles the holder to one Vote for each one hundred dollars of its amount, exclusive of interest, at all meetings of stockholders, and on all affairs of The New York, Lake Erie and Western Railroad Company, under such regulations as to registry and otherwise as the Company may from time to time prescribe.

SCHEDULE B.—UNITED STATES OF AMERICA, STATE OF NEW YORK.

$1,000 (£200)

The New York, Lake Erie and Western Railroad Company New Second Consolidated Mortgage Bond.

KNOW ALL MEN BY THESE PRESENTS, That the New York, Lake Erie and Western Railroad Company acknowledges itself indebted unto Edwin D. Morgan, or to the registered holder, or if unregistered to the bearer hereof, in the sum of 1,000 dollars gold coin of the United States of America, which the said company promises and agrees to pay in like gold coin or in sterling money, at the rate of four shillings to the dollar, to the registered holder, or if unregistered to the bearer hereof, on the 1st day of December, A. D. 1969, at the office of the said company, in the city of New York, or at the Agency of said company in the city of London; and also to pay, until repayment, in like gold coin or sterling money, at the rate aforesaid, interest at six per centum per annum, to be computed from the first day of December, which will be in the year 1879, half yearly, on the first days of June and December in each year, at the office of the company, in the city of New York, or at the holder's option, at the agency

of the company in London, on the presentation and surrender of the annexed coupons payable to bearer as they severally become due.

The holder of this bond may, at any time, on payment of the fee established therefor, have the same registered, under such regulations as the company may establish, in his name, or the name of any nominee or nominees, on the books of the company at New York, or such other place or places of registration as the company may designate, and such registration may from time to time, on complying with such regulations, be extinguished and canceled, and again renewed; but after such registration and while the same remains unextinguished and uncanceled, this bond can only be transferred by the registered holder, his duly authorized agent or lawful successor in title, by a proper entry of transfer on the books of the company, and an endorsement of such transfer upon the bond. Due extinguishment and cancellation of registration stamped or endorsed upon the bond by the company, will restore the negotiability thereof.

This Bond is issued under and in pursuance of the plan and agreement of foreclosure and reorganization of the Erie Railway Company set forth in the Certificate of Incorporation of the obligor herein, the New York, Lake Erie and Western Railroad Company, on file in the office of the Secretary of State of the State of New York, to which reference is had, and is one of a series amounting in the aggregate to $25,000,000, and consisting of 24,000 bonds, each for the sum of $1,000 (as an equivalent of £200 sterling), and numbered from "1" to "24,000" inclusive, and 2,000 bonds each for the sum of $500 (as an equivalent of £100 sterling), and numbered from 24,001 to 26,000 inclusive, all which, together with certain other bonds of the obligor, known as the Second Consolidated Mortgage Funded Coupon Bonds, are equally secured by and subject to all the terms and provisions of an Indenture of Mortgage or Deed of Trust, duly executed and recorded and delivered by the obligor to the Farmers' Loan and Trust Company of the City of New York, Trustee, and conveying to the said Trustee in Trust all the franchises, railways, appurtenances, terms, estates, rights or interests in railways, including all branches and leased lines, also all the real, personal or mixed property of the obligor herein of every kind and description, and all railways, franchises and property, real, personal or mixed, that may be at any time acquired by the obligor herein, subsequent to the date of the said Indenture of Mortgage, as by the said Indenture of Mortgage in the possession of the said Trustee, and duly recorded, will fully and at large appear, reference thereto being had. But subject, nevertheless, to the existing priority of lien of certain outstanding bonds of the New York and Erie Railroad Company and the provisions of the several mortgages securing the same, viz.: First Mortgage Bonds, amounting to $2,483,000; Second Mortgage Bonds, amounting to $2,174,000; Third Mortgage bonds, amounting to $4,852,000; Fourth Mortgage Bonds, amounting to $2,937,000; and Fifth Mortgage Bonds, amounting to $709,500. And also subject to the priority of the outstanding Mortgage Bonds given by the Buffalo Branch of the Erie Railway Company upon that part of the said Railway which is between Hornellsville, in Steuben County, and Attica, in Wyoming County, New York, amounting in the aggregate to $182,600. And also subject to the existing prior lien of the outstanding bonds secured by the First Consolidated Mortgage of the Erie Railway Company, amounting to $16,656,000, and the Coupon Bonds issued by the obligor herein under and in pursuance of the said plan and agreement of foreclosure and reorganization for and in respect of accrued and funded interest on the said First Consolidated Mortgage Bonds, amounting in the aggregate to not exceeding $3,718,100, and also subject to the prior lien of the bonds (not to exceed in the aggregate $2,500,000) referred to in Article First of the mortgage by which this bond is secured.

This Bond is issued subject to the express condition that no right of action thereon, either at law or in equity, nor any right to enforce the mortgage security, shall arise for or in consequence of any failure to pay interest which may result from the want of net earnings of the mortgaged premises applicable to the payment of interest thereon, until on each of six successive due dates of Coupons some interest secured by the said Indenture shall be in default and unpaid.

If at any time during the currency of this Bond the obligor should not be able to pay in full an interest Coupon as it falls due, but should be able to pay some part thereof, such part payment will be made *pro rata* on the entire issue, under such regulations as the Board of Directors may prescribe; and each coupon will be paid in full before any payment upon the succeeding coupon.

The series of Bonds, amounting to $25,000,000, of which this Bond is one, and another series of Bonds, amounting in the aggregate to $8,597,400, known as Second Consolidated Mortgage Funded Coupon Bonds, secured by the same Mortgage, after the 1st day of June, 1883, will become and be thenceforth one series, of the aggregate amount of $33,597,400, having like rights, security, terms and conditions, in all respects.

This Bond shall not become obligatory until authenticated by a certificate thereon signed by the said Farmers' Loan and Trust Company, Trustee, and countersigned by the Secretary of the Voting Trustees mentioned in the said Certificate of Incorporation.

In testimony whereof, the said The New York, Lake Erie and Western Railroad Company has caused its corporate seal to be hereto affixed and the same attested by the signatures of its President and Secretary, and the coupons annexed by the name of the said Secretary, on this fifth day of October, in the year of our Lord one thousand eight hundred and seventy-eight.

President.
Secretary.

(Countersigned)

Secretary of Voting Trustees.

Coupon.

No. ..

THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY promises to pay to the bearer hereof, at the office of the Company in New York, or at his option, at the Agency of the Company in London, on the day of , 18 , Dollars (gold), or its equivalent in sterling, at four shillings to the dollar, being interest for the preceding half year on the Company's New Second Consolidated Mortgage Bond, No. .

$.... £.... *Secretary.*

[The form of certificate to be endorsed upon the Bonds aforesaid by the Farmers' Loan and Trust Company, party of the second part, Trustee, shall be as follows:]

The Farmers' Loan and Trust Company hereby certifies that this Bond is one of the series of Bonds in the body thereof mentioned and described, and is secured in the manner therein stated by a Mortgage of The New York, Lake Erie and Western Railroad Company to the said Farmers' Loan and Trust Company, bearing date the 5th day of October, 1878, duly recorded.

[Each of the said Bonds shall bear the following endorsement, to indicate the right of the holder thereof to vote thereon, that is to say:]

This Bond entitles the holder to one Vote for each one hundred dollars of its amount, exclusive of interest, at all Meetings of Stockholders, and on all affairs of The New York, Lake Erie and Western Railroad Company, under such regulations as to registry and otherwise as the Company may from time to time prescribe.

SCHEDULE C.—UNITED STATES OF AMERICA, STATE OF NEW YORK.

$1,000 (£200).

The New York, Lake Erie and Western Railroad Company Second Consolidated Mortgage Funded Coupon Bond.

KNOW ALL MEN BY THESE PRESENTS, That the New York, Lake Erie and Western Railroad Company acknowledges itself indebted unto Edwin D. Morgan, or to the registered holder, or, if unregistered, to the bearer hereof, in the sum of one thousand dollars gold coin of the United States of America, which the said company promises and agrees to pay in like gold coin or in sterling money, at the rate of

four shillings to the dollar, to the registered holder, or, if unregistered, to the bearer hereof, on the 1st day of December, A. D. 1969, at the office of the said company in the City of New York, or at the agency of said company in the City of London; and also to pay (until repayment) interest thereon in like gold coin or sterling money, at the rate aforesaid, to be computed from the 1st day of June, in the year 1878, to the 1st day of June, in the year 1883, at the rate of 5 per centum per annum, and from the 1st day of June, in the year 1883, at the rate of 6 per centum per annum, and payable half-yearly on the 1st days of June and December, at the office of the company in the City of New York, or at the holder's option, at the agency of the company in London, on the presentation and surrender of the annexed coupons payable to bearer as they severally become due.

The holder of this bond may, at any time, on payment of the fee established therefor, have the same registered, under such regulations as the company may establish, in his name, or the name of any nominee or nominees, on the books of the company at New York, or such other place or places of registration as the company may designate, and such registration may from time to time, on complying with such regulations, be extinguished and canceled, and again renewed; but after such registration, and while the same remains unextinguished and uncanceled, this bond can only be transferred by the registered holder, his duly authorized agent or lawful successor in title, by a proper entry of transfer on the books of the company, and an endorsement of such transfer upon the bond. Due extinguishment and cancellation of registration stamped or endorsed upon the bond by the company will restore the negotiability thereof.

This bond is issued under and in pursuance of the plan and agreement of foreclosure and reorganization of the Erie Railway Company set forth in the Certificate of Incorporation of the obligor herein, the New York, Lake Erie and Western Railroad Company, on file in the office of the Secretary of State of the State of New York, to which reference is had, and is one of a series amounting in the aggregate to not exceeding $8,597,400, and the aggregate of this issue of bonds represents the interest upon the bonds secured by the Second Consolidated Mortgage of the Erie Railway Company (foreclosed) funded under and in pursuance of the said plan and agreement. This series of bonds, together with another series of bonds of the obligor herein, representing the principal of the bonds of the Erie Railway Company, secured by the said Second Consolidated Mortgage foreclosed as aforesaid, the latter series amounting in the aggregate to not exceeding $25,000,000, are equally secured by and subject to all the terms and provisions of an Indenture of Mortgage or Deed of Trust, duly executed and delivered by the obligor to the Farmers' Loan and Trust Company of the City of New York, Trustee, and duly recorded, conveying to the said trustee in trust all franchises, railways, appurtenances, terms, estates, rights or interests in railways, including all branches and leased lines; also all the real, personal, or mixed property of the obligor herein, of every kind and description, and all railways, franchises and property, real, personal, or mixed, that may be at any time acquired by the obligor herein, subsequent to the date of the said Indenture of Mortgage, as by the said Indenture of Mortgage in the possession of the said trustee, and duly recorded, will fully and at large appear, reference thereto being had but subject, nevertheless, to the existing priority of lien of certain outstanding bonds of the New York and Erie Railroad Company, and the provisions of the several mortgages securing the same, viz., First Mortgage Bonds, amounting to $2,483,000; Second Mortgage Bonds, amounting to $2,174,000; Third Mortgage Bonds, amounting to $4,852,000; Fourth Mortgage Bonds, amounting to $2,937,000; Fifth Mortgage Bonds, amounting to $709,500; and also subject to the priority of the outstanding Mortgage Bonds given by the Buffalo branch of the Erie Railway Company, and by the Erie Railway Company, upon that part of the said railway which is between Hornellsville, in Steuben County, and Attica, in Wyoming County, New York, amounting in the aggregate to $182,600; and also subject to the existing prior lien of the outstanding bonds secured by the First Consolidated Mortgage of the Erie Railway Company, amounting to $16,656,000, and the Coupon Bonds issued by the obligor herein, under and in pursuance of the said plan and agreement of foreclosure and reorganization, for and in respect

of accrued and funded interest on the said First Consolidated Mortgage Bonds, amounting in the aggregate to not exceeding $3,718,100, and also subject to the prior lien of the bonds (not to exceed in the aggregate $2,500,000) referred to in Article First of the mortgage by which this bond is secured.

This bond is issued subject to the express condition that no right of action thereon, either at law or in equity, nor any right to enforce the mortgage security, shall arise for or in consequence of any failure to pay interest which may result from the want of net earnings of the mortgaged premises applicable to the payment of interest thereon, until on each of six successive due dates of coupons, some interest secured by the said Indenture shall be in default and unpaid. If at any time during the currency of this bond the obligor should not be able to pay in full an interest coupon as it falls due, but should be able to pay some part thereof, such part payment will be made *pro rata* on the entire issue, under such regulations as the Board of Directors may prescribe, and each coupon will be paid in full before any payment upon the succeeding coupon.

The series of bonds of which this is one, and another series of bonds, amounting in the aggregate to $25,000,000, secured by the same mortgage, after the first day of June, 1883, will become and be thenceforth one series of the aggregate amount of $33,597,400, having like rights, security, terms, and conditions in all respects.

This bond shall not become obligatory until authenticated by certificate thereon, signed by the said Farmers' Loan and Trust Company, Trustee, and countersigned by the Secretary of the Voting Trustees mentioned in the said Certificate of Incorporation.

IN TESTIMONY WHEREOF, the said New York, Lake Erie and Western Railroad Company has caused its corporate seal to be hereto affixed and the same attested by the signatures of its President and Secretary, and the Coupons annexed by the name of the said Secretary on this fifth day of October, in the year of our Lord one thousand eight hundred and seventy-eight.

President.
Secretary.

Countersigned.

Secretary of Voting Trustees.

Coupon.

No .....

THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY, Promises to pay to the bearer hereof, at the office of the Company, in New York, or at his option, at the Agency of the Company in London, on the day of , 18 Dollars (gold), or its equivalent in sterling, at four shillings to the dollar, being interest for the preceding half year on the Company's Second Consolidated Mortgage Funded Coupon Bond, No.

$..... (£.....)

Secretary.

[The form of the certificate to be endorsed upon the bonds aforesaid by the Farmers' Loan and Trust Company, party of the second part, Trustee, shall be as follows :]

The Farmers' Loan and Trust Company hereby certifies that this bond is one of the series of bonds in the body thereof mentioned and described, and is secured in the manner therein stated by a mortgage of The New York, Lake Erie and Western Railroad Company, to The Farmers' Loan and Trust Company, bearing date the fifth day of October, 1878, duly recorded.

[Each of the said bonds shall bear the following endorsement to indicate the right of the holder thereof to vote thereon, that is to say :]

This bond entitles the holder to one vote for each 100 dollars of its amount, exclusive of interest, at all meetings of stockholders and on all affairs of the New York, Lake Erie and Western Railroad Company, under such regulations as to registry or production, and otherwise, as the Company may from time to time prescribe.

OFFICE OF

The Farmers' Loan & Trust Company,

26 EXCHANGE PLACE,

Cor. William St.,

Agents in New York of the RECONSTRUCTION TRUSTEES IN LONDON OF THE ERIE RAILWAY COMPANY, *under the Amended Scheme of Reconstruction, dated 28th August,* 1876.

(P. O. BOX, 1,510)

No. 1000. NEW YORK, 187

RECEIVED, *from* _____

_____ *Bonds of the*

Second Consolidated Mortgage of the Erie Railway Company.

of One Thousand Dollars each, and Numbered _____

with Coupons attached, from and including No. 3, due June, 1875, on account of the Reconstruction Trustees in London, in accordance with the Amended Scheme of Reconstruction.

The right to this Certificate, and to the new securities TO BE EXCHANGED UNDER IT, *under the Amended Scheme, will pass by delivery to the bearer hereof.*

The Trustees do not accept responsibility for the genuineness of the Bonds in exchange for which this Certificate is issued, but the original Bonds can be inspected at this Office.

THE FARMERS' LOAN & TRUST COMPANY,

Agents in New York for the Reconstruction Trustees in London.

$ *By* _____

President.

No. 20.

OFFICE OF

The Farmers' Loan & Trust Company,

26 EXCHANGE PLACE,
Cor. William St.,

Agents in New York of the RECONSTRUCTION TRUSTEES IN LONDON OF THE ERIE RAILWAY COMPANY, *under the Amended Scheme of Reconstruction, dated 28th August,* 1876.

(P. O. BOX, 1,510.)

No. 1000. NEW YORK, 187

RECEIVED, *from* _____

_____

Seven per cent. Convertible Gold Bonds of the Erie Railway Company.

of _____ *Dollars each, and Numbered*

_____

with Coupons attached, from and including No. 10, due July, 1875, on account of the Reconstruction Trustees in London, in accordance with the Amended Scheme of Reconstruction.

The right to this Certificate, and to the new securities to BE EXCHANGED *under it, under the Amended Scheme, will pass by delivery to the bearer hereof.*

The Trustees do not accept responsibility for the genuineness of the Bonds in exchange for which this Certificate is issued, but the original Bonds can be inspected at this Office.

THE FARMERS' LOAN & TRUST COMPANY,
Agents in New York for the Reconstruction Trustees in London.

$ *By*

President.

No. 21.

Agreement—Erie Railway Company and Jay Gould.

AGREEMENT made this eighteenth day of December, in the year one thousand eight hundred and seventy-two, between the Erie Railway Company, party of the first part, and Jay Gould, party of the second part.

WHEREAS, the said company has large claims against the said Jay Gould, some of which are now in suit, and some of which have been presented to him, but which are not in suit;

AND WHEREAS, it is proposed that a full settlement and compromise shall be made of all the said claims;

NOW, THEREFORE, it has been and is hereby mutually covenanted and agreed by and between the said parties, in consideration of the premises and of the sum of one dollar by each of said parties to the other duly paid, as follows:

First.—The complaint in the main suit against said Gould shall be amended so as to cover all the various items of claim of every nature to this date alleged to be due to the Erie Company from said Gould, as well as all existing claims for property or stocks, and for all items appearing to be due to said company by said Gould or his co-partners hereinafter mentioned, other than James Fisk, Junior, on the books of the Erie Company, or on those of Smith, Gould, Martin & Company, or of the other firms in which said Gould was or is a partner, all of which last-mentioned books are now freely open to the examination of said company, and such complaint shall be so framed as to embrace all other accounts, claims, causes of action, and demands of every nature against said Jay Gould, or his said co-partners other than said James Fisk, Junior, whether the same be or not specifically set forth, the intention of the parties being to compromise everything to this date; and said Gould in making this present agreement being induced thereto by the agreement that he shall be released from all such specific claims, many of which he does not admit to be just, and that he shall also be released from other large claims, which the said company alleges may exist and may be lawfully due by him to said company, and are not known in detail, but which by this compromise are released and abandoned by the said company.

Second.—Now, therefore, the said Erie Railway Company, in execution of this agreement and for the considerations hereinafter mentioned, and of the sum of one dollar to it in hand paid by the said Gould, and for other goods and valuable considerations, *doth hereby release and forever discharge* the said Jay Gould and all his co-partners in the various firms of Smith, Gould, Martin & Company, Willard, Martin & Bach, Joslyn, Bach & Company, and Osborn & Chapin—other than the said James Fisk, Junior—from all accounts, claims, causes of action and demands of every nature, by reason of any matter, cause or thing to the day of the date hereof, *excepting nevertheless* from the operation of this release the covenants and agreements on the part of the said Gould to be kept and performed, as the same are hereinafter set forth.

Third.—And the said Gould, in consideration as aforesaid, covenants and agrees for himself and his heirs, executors and administrators, to and with the said Erie Railway Company, that he will pay, assign, transfer and set over to the said company, to be held by it, as its own absolute property, on the execution hereof, the following securities and property, viz.:

Shares in the Brooks Locomotive Works, of the par value of	$99,000
" of the Erie Emigrant Company, " "	65,000
" National Stock Yard Company, " "	186,000
" Jefferson Railroad Company, " "	1,950,000
" Blue Stone Company, " "	86,000
Blue Stone Company Bonds	12,000
Shares Glenwood Coal Company, of the par value of	1,000,000
Glenwood Coal Company's First Mortgage Bonds	124,000
" " " Second Mortgage Bonds	500,000

Shares	Suspension Bridge Company, of the par value of	80,000
"	Lackawanna and Susquehanna Company, of the par value of	40,000
"	Alleghany Transportation Company, " "	450,000
"	New York and Hackensack RR. Company, " "	179,400
"	Hackensack Extension RR. Company, " "	50,000
"	Nyack and Northern RR. Company, " "	16,000
"	Northern Railroad Company, " "	900
"	Erie Railroad preferred stock scrip	34,000
"	Jefferson Car Company	178,000

Fourth.—And the said Jay Gould in like manner further covenants and agrees to and with said company that he will convey and cause to be conveyed to the said company simultaneously with the delivery hereof, by good and absolute conveyances in fee simple absolute, or by assignments of leases where the title is leasehold, with proper releases of dower, and with full covenants of warranty against all liens* and incumbrances except as below, the consideration for such conveyances to be the sum of one million five hundred thousand dollars, to be credited upon such claims against said Gould, all the following property in the City of New York, viz.: the Opera House and its appurtenances at the corner of the Eighth Avenue and Twenty-third Street, in said city, and all the houses and lots on Twenty-third and Twenty-fourth Streets adjoining or near to the same, being all the properties or real estate standing in the name of said Gould, or of said Gould and James Fisk, Junior, at the time of his decease, and including certain lots and their appurtenances near to the Hudson River, in said Twenty-third Street, and including the properties in which said Gould has any right, title or interest by way of lease, contract, or otherwise; all of said estates and property which were purchased from one Pike, are to be conveyed, freed and cleared from mortgagees, liens and encumbrances. Such portions of said properties as are leasehold to be transferred, freed from all claims and liens, including mortgages, if the same were originally purchased from said Pike, but any other of said properties to be transferred, or the contracts therefor to be assigned and transferred, subject to the mortgages existing thereon at the time when said Gould or said Gould and Fisk acquired title thereto, or to such portion of the original purchase-money as has not been paid, but to no other liens, charges, or incumbrances.

Fifth.—And the said Gould, in like manner, for himself, his heirs, executors and administrators, further covenants and agrees with the said The Erie Railway Company that he and they will also forthwith execute and deliver, in further consideration of said release, full and absolute conveyances; in which conveyances his wife shall join, releasing her dower, if any, to the said Company for all and singular his right, title and interest in and to the various properties for which a suit is now pending against him, in the name and on behalf of the Erie Railway Company, or which he owns, or which stand in his name in the States of New York, Pennsylvania and Ohio, or on or near the line of the Erie Railway or its branches, in the State of New Jersey; all such properties, rights or interests to be conveyed or transferred from time to time on demand on the presentation of proper transfers or conveyances to him for execution, taxes and assessments on the properties, not in the City of New York, are† not to be paid by the said Gould, except on the Glenwood properties which he agrees to discharge. Provided, however, that this covenant to convey shall not embrace the house and its appurtenances on the Fifth Avenue, now occupied by said Gould, nor the stable also occupied by him.

Sixth.—The interest of said Gould in the New Lisbon Coal Company and in the Ohio Coal and Mining Company, if the same was paid for out of the moneys of the Erie Railway, is hereby transferred to it; but if the same was paid for out of the said Gould's individual property, then the same shall be held by Samuel L. M. Barlow, to whom the same was transferred, conditionally, a few months ago, the said Gould being at this time unable to determine whether the same is his own property or is held by him in trust for the Erie Company.

* *Heirs* in original.
† *Or* in original.

Seventh.—And the said Gould in like manner covenants to and with the Erie Railway Company, that he will, as soon as practicable, cause or procure all pending suits or proceedings in bankruptcy against the Glenwood Coal Company to be discontinued, and that he will pay and cancel all the existing floating debt of the said Company, or will otherwise procure a perfect title to the Erie Railway of all its property, real and personal, freed from all liens or claims other than those of said Erie Railway Company, and will convey and transfer to said Glenwood Coal Company all the real estate, personal property and leases purchased for, belonging to or connected with said Glenwood Coal Company, freed from all liens and claims, except as aforesaid. And the said Erie Company will consent to the discontinuance of the said bankruptcy proceedings.

Eighth.—The existing lease of the Opera House to the Erie Railway the said Gould agrees to cancel and procure to be cancelled, and all other leases of the New York properties herein mentioned he likewise agrees to transfer and to procure to be transferred as of this date to the Erie Railway Company.

Ninth.—And the said Gould further covenants and agrees, in consideration as aforesaid, with the Erie Railway Company, in further consideration of said release, that he will deliver and cause to be transferred to the said Company or its assigns, one million of dollars in the capital stock of the United States Express Company, at its par value, and this transfer and delivery of said stock the said Gould agrees to complete as speedily as may be practicable, and in any case within six months from the date hereof. And said Gould having made a contract by which said Express Company agreed to deliver to him an equal amount of said stock, the said Erie Railway Company agrees to render any proper assistance when and as requested, intended to facilitate the said Gould in obtaining the same, and hereafter to do no act that will prevent him from obtaining the same, and also agrees that the said Gould may, if an action for the same becomes necessary, sue the said Express Company to recover the said stock in his own name and at his own cost and charge, or may use the name of the Erie Railway, also at his own cost, for that purpose, if he be so advised.

Tenth.—And the said Gould hereby in like manner sells, assigns and transfers to the said Erie Railway Company all of his interest in the United States Tow-boat Company, and agrees forthwith to deliver the evidence of such interest to the said Company.

Eleventh.—The said Gould, by a certain contract with the Erie Railway Company for the sale to it of three million dollars of its consolidated bonds, was to receive a credit of the actual profit realized by the Erie Railway Company on the re-sale of the said bonds, which profit now amounts to the sum of six hundred and fifty thousand dollars or thereabouts. Now it is hereby agreed that such profits, whatever they may be, shall be retained by the Erie Railway Company as its own, and without accountability therefor to said Gould, whose claims thereto or under said contract are hereby released.

Twelfth.—And the said Gould hereby releases the said Erie Railway Company from the obligation to repay certain expenditures by him heretofore made for account of the said Company, and from all other claims, demands and causes of action against the said Company of every nature to this date, and hereby absolves and releases the said Company from all obligations, if any, to pay any other or further sums to him.

Thirteenth.—The said Gould hereby agrees to pay on the execution hereof, the reasonable costs and counsel fees of the plaintiff's attorneys, Messrs. Barlow, Larocque and Macfarland, connected with this settlement or growing out of pending suits.

Fourteenth.—The said Gould hereby agrees to pay on the execution hereof the claims of the Erie Railway Company against the Narragansett Steam Company, now in suit, hereby compromised at the sum of fifty thousand dollars, and all claims by either of said Companies against the other growing out of the occupation of a pier by the Narragansett Company, or otherwise, arising to this date, are hereby released

Fifteenth.—The aforesaid payments by the said Gould of the moneys and transfers of the real and personal property above mentioned, made and to be made, to the Erie Railway Company, in accordance with

the covenants and agreements herein-above set forth, and in consideration of which the Erie Railway Company executes the foregoing release, are intended to be in compromise of its claims against said Gould as recited in the previous portion of this agreement, but in thus compromising and settling with said Company it is understood and agreed that nothing herein contained shall be construed as an admission by said Gould of any wrong to the said Company by him done or suffered, but on the contrary he claims that he has always been prepared and willing to make conveyances to the said Company of the principal part of the properties herein agreed to be conveyed, whenever the necessary discharges to him were properly executed. And it is understood that the remainder of said payments he now makes for the sake of peace, and to terminate annoying litigations. And it is admitted by said Company, that the said Gould has offered to make conveyances to it of a considerable part of the premises now agreed to be conveyed.

IN WITNESS WHEREOF, the said the Erie Railway Company has caused its corporate seal to be hereto affixed and the same to be attested by its President, by order of its Board of Directors, and the said Jay Gould has hereto set his hand and seal the day and year first above written.

(Signed), ERIE RAILWAY COMPANY,
By P. H. WATSON, *President.*

Seal of the Erie Railway Company.

Attest: (Signed). S. N. OTIS, *Secretary.*

(Signed), JAY GOULD. [L. S.]

(Duly acknowledged, &c.)

No. 22.

NEW YORK SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK, *Plaintiff*,

against

THE ERIE RAILWAY COMPANY, HUGH J. JEWETT, THOMAS A. SCOTT, John Taylor Johnston, Marshall O. Roberts, Frederick Schuchardt, W. Butler Duncan, Edwin D. Morgan, Hermann Baltzer, Samuel L. M. Barlow, L. H. Meyer, Henry G. Stebbins, R. Suydam Grant, Lucius Robinson, John A. C. Gray, Cortlandt Parker, and Homer Ramsdell, Directors of the Erie Railway Company, *Defendants;*

William T. Hooker, Joseph Walker, Uriah J. Smith, James Brown, J. C. B. Davis, Dudley S. Gregory, Farmers' Loan & Trust Company, John Earle Williams, Jay Gould, C. T. Hunter, William Butler Duncan, Horatio N. Otis, William C. Rushmore, Cornelius Walsh, John Toney, Zenas H. Russell, Coe F. Young, Dorman B. Eaton, Augustus Frank, Lauren C. Woodruff, John A. C. Gray, and Legrand Lockwood, Defendants as Trustees under various mortgages described and embraced in this action.

Amended Summons for Relief.

To each of the above-named defendants:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber, at the office of Edgar Logan, Esq., No. 58 Wall Street, New York City, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the Court for the relief demanded in the complaint.

Dated May 25th, 1875.

D. PRATT,
Attorney-General for Plaintiff.

SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK, *Plaintiff*,

against

THE ERIE RAILWAY COMPANY *et al.*, *Defendants.*

Trial to be had in the City and County of New York.

Amended and supplemental complaint.

The People of the State of New York, by Daniel Pratt, their Attorney-General, complain and allege:

I.—By an Act of the Legislature of the State of New York, passed April 24, 1832, a corporation was created under the name of the New York and Erie Railroad Company, with power to construct and operate a railroad or way from the City of New York to Lake Erie, in the same State. In addition to the powers and privileges conferred upon the said corporation by the Act above referred to, various other Acts in relation to the said company were passed from time to time thereafter, conferring additional powers and privileges, and imposing other duties and obligations, to all of which the plaintiff prays leave to refer from ime to time as it may become necessary.

In consequence of certain engineering difficulties presented by the mountainous character of certain portions of the route necessary to be adopted in order to construct the whole line of said road, within the borders of this State, authority was given to construct a portion of the said road within the State of Pennsylvania, through the counties of Pike and Susquehanna.

Afterwards, the Legislature of the State of Pennsylvania, by an Act passed February 16, 1841, and by subsequent Acts, to all of which special reference is had, conferred, upon the terms therein mentioned, authority upon the said corporation to construct a portion of its said line within the said State and through the counties aforesaid. The said line of road, under the authority aforesaid, was duly constructed, and the corporation continued to own and operate the same until some time in the year 1859, when it became bankrupt, and such proceedings were had in the premises that in that year a Receiver of its property and franchises was appointed, and took possession thereof. At the date last mentioned, the main line of the road of the said company extended from Piermont, in the State of New York, to Dunkirk, on the shore of Lake Erie, in said State. At the same time the said company held and operated under leases the following lines of road and property, that is to say: A certain road lying in the State of New Jersey, known as the Paterson and Ramapo and Union Railroads, by and over which access was obtained to Jersey City, in that State; a certain property in that State, known as the Long Dock Company, situated on the Hudson River, opposite the City of New York; the Chemung Railroad, so called, then running from Elmira to Watkins, in the State of New York, at the head of the Seneca Lake, and of the Elmira, Jefferson, and Canandaigua Railroad, running from Chemung to Canandaigua.

At the time of the bankruptcy of the said corporation in the year 1859, its property and franchises were subject to the lien of five different mortgages, issued respectively at different periods to secure different series of bonds, amounting in the aggregate to about twenty millions of dollars, and each constituting a lien in due order of priority. Such proceedings were had on the part of the said corporation, the creditors thereof, and under and by virtue of sundry Acts of the Legislature in the premises, that the property and franchises of the said corporation were foreclosed and sold under judicial proceedings duly had in the premises, and under authority of the Legislature, on or about the twenty-eighth day of January, 1861.

II.—The defendant, the Erie Railway Company, was created, organized, and exists under and by virtue of an Act of the Legislature of this State, passed April 4th, 1860, and various subsequent acts in addition thereto. It was created for the purpose of taking title to the property and franchises of the said New York and Erie Railroad Company, which, in pursuance of an amicable arrangement made to that end under authority of law, were purchased by certain trustees for, and duly conveyed to the said Erie Railway Company, in the said year 1861.

The said Erie Railway Company thereupon became possessed of, and succeeded to all the rights, privileges, and franchises, together with the railroad, its appurtenances, branches, and leased lines, thereto fore owned and possessed by the said New York and Erie Railroad Company. The said Erie Railway Company also took title to the said property subject to certain outstanding mortgages upon the property aforesaid, and to certain pecuniary liabilities of the New York and Erie Railroad Company hereinafter more particularly referred to. The said Erie Railway Company derives the powers, rights and franchises which it now possesses and exercises under and by virtue of the law hereinbefore specially referred to, certain other Acts of the Legislature of this State passed from time to time since the organization of the said company, and the general laws of this State governing railroad and other corporations; also certain special and general laws of the respective States of New Jersey and Pennsylvania, in both of which States the said corporation possesses franchises and privileges, owns and operates railroads, and in both of which it is subject to various duties, liabilities, and regulations; to all of which laws the plaintiff begs leave to refer from time to time, as occasion may require.

III.—The main line of road at present owned and operated by the said Erie Railway Company

extends from Jersey City in the State of New Jersey to Dunkirk, in the State of New York, a distance of 458.97 miles, together with various branches from said main line. In addition to this main line, and these branches, it possesses leases of and operates various other railroads all connecting with its own main line and operated in connection therewith.

An enumeration and description of these several leased lines is contained in a document recently issued by the said Company, and entitled "Statement of H. J. Jewett, President of the Erie Railway Company," and which is hereunto annexed, marked Exhibit "A," and made part of this complaint.*

The number of miles of railroad possessed and operated by the said company, is in the aggregate about 958.97 miles. In seasons of average business prosperity its annual tonnage is about 6,338,000 tons, and the number of passengers carried is about 3,848,000. The average number of persons employed by the said company in various capacities is about 12,792.

The railroads of the said company, together with all their appurtenances, rolling stock, etc., etc., are on the whole in good state and condition, and the business of the said company as a common carrier is conducted with skill and efficiency, and with due regard to the public interest. The railroads owned and operated by the said company, in this and adjoining States, are so numerous and extensive as to constitute, and they do constitute, a very important part of the commercial system, not only of this State, but of the United States. The railroads of this corporation do, in fact, constitute one of the four great trunk lines which alone extends from the lakes to sea-board, and over which the commerce of the West with the East and with Europe is conducted. It is, therefore, of vital importance to the people of this State that the said railroads now as aforesaid owned, possessed, and operated by the said company under leases and otherwise should continue to be operated with skill and efficiency according to the true intent and meaning of the laws under which the said company holds and exercises its rights and franchises.

To this end it is of like importance that each and all of the said leases now held by the said company should be preserved from forfeiture for nonpayment of rent, to which they are all subject, and that the said leased roads should continue to be operated in connection with, and as a part of, the said main line, each of the said leases being valuable and profitable, and constituting an important link in, and part of, the system of roads, of which they do respectively form a part.

In addition to the reasons above stated, all and singular, the leased railroads before mentioned are embraced in the mortgages hereinafter particularly referred to, and many of them constitute an important part of the mortgage security, and by a forfeiture thereof the mortgage creditors of the said company would sustain irreparable damage, contrary to equity and good conscience.

IV.—The defendant, The Erie Railway Company, was created with a capital stock of 114,375 shares of common stock, of one hundred dollars each, and 85,357 shares of preferred stock of one hundred dollars each. The common stock of the said company has been increased from time to time, and now amounts to 780,000 shares. The amount of preferred stock remains as above stated, with the exception of $1,210, which amount was added by a special Act of the Legislature of New York, March 14, 1866.

The funded debt of the said company, and which is secured by various mortgages of the property and franchises of the company, is of the amount and nature stated and described in the said Exhibit "A," and in table A of the said exhibit. The interest payable annually, on the said debt amounts to $4,078,106.56, as shown in table A of the said exhibit. Table B of the said Exhibit A contains a statement of the disposition made of bonds to the amount of $15,000,000, issued under the so-called second consolidated mortgage of the said company. By the said table it appears that, whereas the said

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* NOTE.—See Exhibit No. 35, p. 57 Appendix.

company is in form obligated to pay the said bonds, principal and interest, at par, the said company, has only realized therefrom at the rate of about forty cents in the dollar.

The plaintiff charges that the said mortgage and the said bonds were issued without authority of law, and that they are void. That the manner of dealing with the said bonds on the part of the said McHenry, the said London Banking Association, and others, as stated in the said table, was and is fraudulent and unlawful, and that each and all of the claims of the said McHenry and others were and are fraudulent and unlawful. That the said bonds, nor any part thereof, are held by *bona fide* holders for value, and that if the said company is liable for any amount in respect of the said bonds it is only liable for the amount of money actually received therefor and no more.

As to the said so-called first consolidated bonds, whereof there are outstanding twelve million and seventy-six thousand dollars ($12,076,000), and as to the said so-called convertible gold bonds, the plaintiff has no knowledge and no information sufficient to form a belief as to the validity thereof, or the extent to which the said company is justly liable in respect thereof, and therefore leaves the defendants respectively to make such proof in the premises as they may be advised.

The plaintiff is informed and believes that all the other bonds specified in the said table, to the amount therein specified, constitute legal and valid obligations of the said company according to the tenor thereof.

V.—By table E annexed to the said Exhibit, it appears that the amount of rental payable annually by the said company in respect of its leased lines is nine hundred and eighty-six thousand seven hundred and twenty-two dollars and thirty-one cents ($986,722.31), and the plaintiff is informed and believes that the said several leases are liable to forfeiture in case of non-payment of rent as the same matures.*

The plaintiff is also informed and believes thet the said company is liable as guarantor in respect of the said leases, upon some or all of the bonds of the said several companies now outstanding, but the plaintiff is not informed as to the nature and extent of such liability further than appears by the said table.

VI.—The plaintiff is informed and believes that the unsecured debts of the said company, now outstanding, due and unpaid, and shortly to become due, amount to two millions six hundred and forty-eight thousand five hundred and thirty-one dollars and fifty-five cents ($2,648,531.55). Of this sum, one million and eighty-six thousand eight hundred and ninety-one dollars and eighty-seven cents ($1,086,891.87) is due to servants, laborers, employees, and agents of all kinds, for wages, and has remained due and unpaid for about two months, to the great prejudice of the said company, to the prejudice of the public interest, and of the persons to whom wages are so due, who are dependent upon the receipt thereof for their support and maintenance. Of the said unsecured debt, the sum of six hundred and thirty-five thousand eight hundred and nine dollars and eighty-four cents ($635,809.84) is due for supplies necessary for the operation and maintenance of the said road, which sum has remained many months due and unpaid. The sums above mentioned, and due for services rendered and supplies furnished to the said company, constitute in equity a preferential charge on the property and revenues of the said company, and, as the plaintiff is advised, should be so regarded and dealt with by the Court.

VII.—In addition to the existing liabilities of the said company before mentioned, there are very many actions pending against the said company, in this State, and in other States, involving large claims of various kinds, and amounting, in all, to many hundred thousand dollars. But the plaintiff is

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* NOTE.—See Exhibit No. 29, p. 56 Appendix.

not at present advised of the number or description of such actions, or the character or amount of claims involved.

There are, as the plaintiff is informed and believes, other claims against said company outstanding, unsettled and unadjusted, but not in suit, to a very large amount; but the real nature and exact amount whereof is to the plaintiff at present unknown.

There are also outstanding against the said company, as the plaintiff is informed and believes, judgments unpaid and unsatisfied, but to what amount the plaintiff is not at present advised.

VIII.—The directors of the said company in the year 1873, believing it to be for the interest of the company so to do, purchased or caused to be purchased for and on account of the said company, a large amount of stock in companies owning so-called coal lands in the State of Pennsylvania, paying therefor in the whole about the sum of two million five hundred and ninety-four thousand one hundred and ninety-one dollars and sixty-five cents ($2,594,191.65), of which amount one million nine hundred and thirty-one thousand eight hundred and ten dollars and eight cents ($1,931,810.08) was applied to the purchase of said stock, and the balance, six hundred and sixty-two thousand three hundred and eighty-one dollars and fifty-seven cents ($662,381.57) was advanced to meet expenses incurred by said companies in the management and development of the same.

The stock so purchased is not at present a source of revenue. Moreover, the plaintiff alleges that such purchase and payment were *ultra vires*—in violation of the charter of the said company—and that such purchase constitutes a just ground for the forfeiture thereof.

IX.—In the month of May, 1874, the directors of the said company, in order to perfect and control a through line of railroad from the City of New York to the City of Chicago, in the State of Illinois, entered into an agreement with the Atlantic and Great Western Railroad Company, a corporation existing under the laws of the respective States of New York, Pennsylvania and Ohio, for the lease of the road of that company, extending from Salamanca, in the State of New York, to Dayton, in the State of Ohio.

The plaintiff alleges and charges that the said agreement was and is *ultra vires*, and void. The plaintiff is informed and believes that the said agreement was never perfected or acted upon, and that the said pretended lease, shortly after the execution thereof, was in fact abrogated by the insolvency of the said Atlantic and Great Western Railroad Company, and the appointment of a receiver of its road, property and franchises. Nevertheless the plaintiff is informed and believes the said last named company claims and insists upon the validity of the said lease, that the same did go into effect and operation, and that a large sum of money is due from the Erie Railway Company in respect thereof. The plaintiff is advised that this pretended lease should be adjudged to be void, and that an accounting should be had in respect of any transactions had under the same.

X.—The said Erie Railway Company heretofore, to wit, on or about the twenty-second day of November, 1869, wrongfully and illegally declared a so-called scrip dividend of seven per cent. on the said preferred stock of the said company, and issued therefor certain so-called scrip, bearing interest and payable at a certain time therein named. The plaintiff is informed and believes that no dividend, within the true intent and meaning of the law, had been earned on the said preferred stock, and that the said scrip so issued was and is illegal and void; that an accounting should be had in the premises; the holders of the said scrip, when discovered, should be made parties to this action, and the said scrip delivered up to be cancelled.

XI.—The directors of the said company heretofore, to wit, on or about the eleventh day of February, 1873, did declare and authorize to be paid a dividend of three and one-half (3½) per cent. on the said preferred stock of the said company, amounting to two hundred and ninety-eight thousand seven hundred and ninety-one dollars and eighty-five cents ($298,791.85), and a dividend of one and three-quarters (1¾) per cent. on the par value of the common stock of the said company, amounting to one million three hundred and sixty-five thousand dollars ($1,365,000).

The plaintiff is informed and believes that these dividends were not earned, and were not properly declared, and he is advised that there should be an accounting in the premises in order that it may be made known whether the said dividends were declared in good faith, and according to law, and if the contrary thereof should appear, whether the sums so paid can and should be restored to the treasury of the said company.

XII.—The plaintiff further charges and alleges that the current net income of the said company from the earnings of its said railroad and property for many years last past has not at any time been equal to the payment and satisfaction of the current obligations of the said company as they matured; that these obligations have from time to time been met and discharged by a resort to the expedient of temporary loans, known as call loans, on which an exorbitant rate of interest has been regularly paid, and which has been rendered much greater and more burthensome by the necessity of frequently renewing the said loans, and in the next place by the appropriation of the proceeds of bonds sold to the discharge of current obligations. That, in consequence of this mode of dealing with the indebtedness of the company, its indebtedness has not in fact been discharged and diminished to any extent, but on the contrary has been continued at an enormous expense to the company, and has constantly and rapidly increased in the aggregate.

The capital stock of the company has not been purchased and held for investment, but has been dealt in by the public for speculative purposes merely. In consequence of the said stock being so used and dealt with, a large number of persons are constantly interested and engaged in depressing the value of the stock, attacking the credit of the company, promoting hostile acts and publications, and, by hostile litigation, otherwise damaging its credit and injuring its business.

The unfavorable influence of this class of persons is not counteracted or neutralized by the influence of another class of speculators, whose interest it is from time to time to enhance the value of stock. While the amount of the capital stock of the company remains so large, and constitutes a mere token to be used for speculative purposes, there can be no permanency in the management of the company, nor can any wise and judicious policy, such as the public interest requires for the management of the affairs of the company, be adopted and carried out by its Board of Directors. For several years last past the Board of Directors of the said company has consisted, and now consists, of citizens of this State, of the best character and standing, who have, in the public interest, devoted much time without charge to the management of the affairs of the said company. The plaintiff does not charge the said directors with any intentional violation of law in the premises, or any dereliction of duty. On the contrary, he expressly admits that they have intended to conduct, and have conducted, the affairs of the said corporation in the manner which they believed to be best for the interest of the said company and for the public.

And in this behalf, the plaintiff alleges that Hugh J. Jewett, the now president of the said company, has, since he became president of the same, managed its affairs with strict integrity, and great skill and ability, and that from his great experience in the management of railroads, from his intimate knowledge of the affairs of this defendant company, and the great confidence reposed in him by the employees of the road and the public generally, the plaintiff believes that he should be continued in the management, possession, and control of the road and property, with the powers of Receiver, as hereinafter prayed for, and that he should be at liberty to consult and advise with his board of directors.

XIII.—The plaintiff further alleges that, notwithstanding the efforts of the president and directors of the said company to maintain the credit and promote the prosperity of the said company, as hereinbefore admitted by the plaintiff, the said company has, in fact, been insolvent for more than one year last past, and has, in fact, not paid its current indebtedness, but has merely changed the form and character thereof, as hereinbefore stated, and that the said company now is entirely insolvent, and the public in danger of sustaining irreparable damage by the waste and destruction of its property.

The net earnings of the said company, since the annual election, in July, 1874, to the present time,

have been only about the sum of three millions one hundred and sixty-three thousand four hundred and fifty-four dollars and nineteen cents ($3,163,454.19).

During the same time the current obligations of the company, for interest and rental, have amounted to about four millions seven hundred and eighty-four thousand nine hundred and eleven dollars ($4,784,911). In addition to such obligations the floating debt of the said company, unsecured, and maturing from time to time, was, at the date of the last annual election, in July, 1874, about five million dollars ($5,000,000). In the meantime the floating debt of the company has been somewhat reduced, but not from and by the application of earnings, but from and by the application of the proceeds of bonds sold at the rate and sacrifice hereinbefore stated, by reason whereof the debt of the said company, though changed in form, has not been diminished, but, on the contrary, has been increased in amount. And at no time during the period aforesaid, or for a period long anterior thereto, has the said company been in a financial condition to pay its current obligations of various kinds as they matured.

The amount now due to the servants, employees and agents of the company, represented by the pay rolls of the company, is about the sum of one million and eighty-six thousand eight hundred and ninety-one dollars and eighty-seven cents ($1,086,891.87), which amount includes wages and salaries due from March of the present year to the present time.

There is now due from the said company to sundry persons for materials and supplies about the sum of one million five hundred thousand dollars ($1,500,000). There is also owing from the said company to sundry persons in respect to bills payable, so called, or unsecured floating debt, about the sum of eight hundred and ninety thousand one hundred and eighty-nine dollars and ninety-one cents ($890,189.91), which said bills payable are becoming due from time to time at short intervals.

For the reasons hereinafter set forth, the current earnings of the company are no more than sufficient to pay current operating expenses, and no part thereof can be appropriated to the payment of the said indebtedness.

The only available assets for the satisfaction of the said indebtedness, or any part thereof, consists of stocks and bonds to the nominal amount of about one hundred thousand dollars ($100,000), but of uncertain market value.

In addition to the indebtedness before in this paragraph specified, the said company is indebted in respect of call and time loans, so called, to the amount of about one million four hundred and five thousand dollars ($1,405,000), and has on deposit with the several creditors of the company in respect of such indebtedness securities of various kinds, mainly in bonds and stocks of real value, considerably in excess of the said indebtedness, but which securities, if sold according to the tenor of the pledge for default in payment of the loan, would realize much less than the true value thereof, and it is essential to the interests of the said company and to the public that the said securities should not be forfeited and sacrificed in consequence of the non-payment of the respective debts to secure which the same are pledged.

On the 1st of June next ensuing, according to the tenor of the so-called second consolidated mortgage bonds, there will become due and payable a semi-annual instalment of interest amounting to five hundred and fifty-three thousand one hundred and ninety dollars and forty cents ($553,190.40), being at the rate of seven per cent. per annum on the dollar on fourteen millions four hundred thousand dollars ($14,400,000) of the said bonds actually issued, and of which the said company, as hereinbefore stated, realized only a small percentage, in consequence of the wrongful and fraudulent conduct of the parties before mentioned, to whom the negotiation thereof in London was entrusted by the said company.

Including the interest last-mentioned and excluding the obligations of the said company hereinbefore specified and presently due and payable, as near as can at present be estimated, the obligations of the said company will mature and become payable between the date hereof and the first day of October

of the present year to the amount of over eight million dollars ($8,000,000), and the estimated receipts of the said company, from earnings and all other sources, according to an estimate most favorable to the said company, does not exceed the sum of four million five hundred and eighty-one thousand two hundred and seventy-one dollars and ninety-four cents ($4,581,271.94). And consequently the receipts of the said company between the periods aforesaid will be nearly four million dollars ($4,000,000) less than the liabilities of the company maturing in the meantime.

This result is in great measure due to an extraordinary diminution in the current receipts of the company in consequence of a long-existing rivalry and competition between the three other great so-called trunk lines of railroad, all of which are, from the situation and locality, natural competitors with and rivals of the Erie Railway Company, and which rivalry and competition has compelled the said company for a considerable period last past to transport freight and passengers at unremunerative rates, and also in great measure to a great diminution in the amount of trade and commerce carried on in the country generally, and especially between the East and West.

XIV.—The plaintiff further alleges that, the premises considered, it manifestly appears, and the fact is so, that the said defendant, the Erie Railway Company, is, and for more than one year last past has been wholly insolvent, and has during that time, within the true intent and meaning of the statute in such case made and provided, neglected to pay and discharge its notes and other evidences of debt, and that the said company must and will continue so to do, and that unless the relief hereafter prayed for be granted by this Court, the public interest, as well as the interest of all persons being stockholders or creditors of the said company, will suffer irreparable loss and damage by the waste and destruction of the property of the said company and the suspension of the lawful business thereof.

In this behalf the plaintiff alleges, by way of recapitulation, and as he has hereinbefore in substance alleged:

1. Admitting that all and singular the acts hereinbefore complained of as *ultra vires* and unlawful were done and performed in good faith by the said company and directors thereof, the plaintiff nevertheless insists that such acts were contrary to law and in violation of the charter of the said company, and constitute just cause for the forfeiture of the franchises of the said company.

2. That by reason of the insolvency of the company it has ceased to be able properly to perform its duties and obligations to the people of this State, the due performance of which was the sole consideration for the granting of its privileges and franchises, and is every day becoming more and more insolvent and more and more unable to perform its public duties and carry on its regular business.

3. The plaintiff alleges, and the fact is so, that there are employed in and about the operation of the said road more than twelve thousand persons in various capacities, as servants, workmen, agents, and employees, and by reason of the failure of the said company to pay the wages of the said persons according to the tenor of its obligations to them respectively, they have threatened to leave the service of the said company, thus not only preventing the said company from performing its duties to the public and exposing the property thereof to imminent danger of waste and destruction, but to the additional danger from lawless violence at the hands of a large body of suffering and exasperated men.

4. That by reason of the premises many and valuable leases held as aforesaid by the said company are liable to be forfeited and lost by and in consequence of the non-payment of rent, to the great prejudice of the said company, its creditors and the people of this State.

The company is nominally governed by an enormous capital stock which represents no value, and is at each election subject to the power and caprices of speculators who have no real interest in its welfare and may be greatly benefited by its bankruptcy.

It is oppressed by an enormous mortgage debt, for which it has received merely a nominal consideration, a large part of which is believed to be utterly fraudulent, and which it cannot hope to pay.

It is still further embarrassed and oppressed by numerous burthensome, and in many cases fraudulent

contracts, most of them, and especially the latter, of several years' standing, which ought in equity and good conscience to be abrogated, and which cannot be fulfilled.

Further, payment on the part of the said company of its aforesaid obligations of different kinds as they mature, except for wages, services and supplies, will, in fact, amount to an unjust and unlawful preference, and a *pro tanto* distribution of the assets of an insolvent corporation contrary to the statute in such case made and provided.

As hereinbefore stated, many of the obligations which the said company is in form obligated to pay, secured as well as unsecured, are, in fact, wholly, to a great extent, fraudulent in law, and cannot, without injustice to other creditors and to the public, be recognized or paid without an examination and accounting as herein prayed for, nor can any part of the assets of the said company be applied to the payment of accruing interest on bonds to the neglect of the current obligations, especially debts due for labor and supplies, without doing great injustice to such creditors of the company, as well as violating the rules of equitable distribution in such cases.

5. The said company is on the eve of being obliged to stop payment even in form, and of being obliged to make default in the payment of interest on its said mortgage bonds.

Immediately thereafter, as the plaintiff is informed, and has reason to believe, a multiplicity of actions of different kinds, and in respect of all and singular the premises, will be at once commenced against the said company, involving applications for injunctions, receivers, and so forth, and so forth, all of which in the present embarrassed state and condition of the company would, for reasons sufficiently hereinbefore set forth, cause irreparable loss and damage to the people of this State, and to the said company and its just creditors.

The plaintiff further says that, the premises considered, the said corporation, the Erie Railroad Company, is within the true intent and meaning of the statute liable to be dissolved, and should be dissolved and wound up, and the plaintiff prays judgment accordingly, and that in the meantime, and while such proceedings are being had and taken in the premises as are required by law, and the character and situation of the said company, a Receiver may be appointed to take, hold, and possess, under the immediate authority and direction of this Court, all and singular the franchises, property, railroad, and appurtenances of the said company, including so far as needs be, the books, papers, and records of the said company, with full power and authority to run and operate the said road, and preserve and protect the said franchises and property, and preserve the corporate organization and existence of the said company, so far as he may be able so to do, till the final judgment and decree in this action; and with such other and general powers as it is usual and in accordance with the rules and practice of this Court to confer upon receivers in like cases, with power, in order to preserve the said subject-matter, and to perform his duties, and to prevent the sacrifice of securities pledged for the payment of debts, to borrow money from time to time on the pledge of the property of the said company, and the rents, revenues and income thereof, subject at all times to the order and direction of the Court in the premises.

That an injunction may issue, restraining the defendants respectively, who are trustees under mortgages heretofore executed by the said company, from commencing or prosecuting any other suits or actions against the said company, and from interfering in any other manner with the said company, or the property and franchises thereof, and that all other persons may be so restrained and enjoined from time to time, when, and if occasion shall require, on their being made defendants in this action. And that the said defendant, the Erie Railway Company, may be restrained and enjoined by the like order of this Court from the payment of any interest on any of the mortgage bonds of the said company hereinbefore referred to, until the further order of this Court in the premises.

That an account may be had and taken of and concerning all and singular the matters and things

in respect whereof an account has been hereinbefore prayed for, to the end that what appertains to equity may be done.

That all and singular the assets and liabilities of the said corporation may be marshalled, the amount of the just debts and obligations may be ascertained and determined, and also the respective order and priority thereof in point of lien, and the amount and extent of such lien, and that the property of the said company of all kinds, including the franchises thereof liable to sale, may be sold at such time under such circumstances, and in such manner as will best preserve and promote public interest, and the interest of the creditors of the said company, and the proceeds distributed in such manner as will best preserve and promote the public interest, and the interest of the creditors of the said company, and the proceeds distributed in such manner as may be just and equitable, and that then and thereupon the said corporation may be dissolved and wound up by the final judgment and decree of this Court. That, in the meantime, Hugh J. Jewett, who is now President of the said company, may be appointed such Receiver as aforesaid, with the power and authority aforesaid.

(Signed) D. PRATT,
Attorney-General of the State of New York.

City and County of New York, ss.:

WILBER M. BROWN, of counsel for the People in the above-entitled action, being duly sworn, deposes and says, that he is acquainted with the facts set forth in the foregoing complaint; that the facts stated therein are true to deponent's own knowledge, except as to those matters stated on information and belief, and as to those matters he believes it to be true.

(Signed) WILBER M. BROWN.

Sworn before me this 25th day of May, 1875.

MAURICE SPILLANE, *Notary Public*, County of New York.

No. 23.

NEW YORK SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK, *Plaintiff*, *against* THE ERIE RAILWAY COMPANY *et al.*, *Defendants.*	*Answer F. L. & T. Co.*

The defendant, the Farmers' Loan and Trust Company, for answer to the complaint in the above-entitled action, and by way of counter-claim, alleges:

First.—I. The said Farmers' Loan and Trust Company admits that the said defendant, the Erie Railway Company, is a corporation in manner and form as in the said complaint is alleged.

That it acquired its several franchises, rights and powers, and now possesses the same in manner and form as therein alleged; that its main line of road and branches, together with the length thereof, are, according to this defendant's best knowledge, information, and belief, correctly stated in the said complaint and the exhibit thereto annexed; that the amount of the common and preferred capital stock of the said company is, according to this defendant's best knowledge, information, and belief, truly stated in the said complaint.

This defendant is informed and believes that the said Erie Railway Company is insolvent, as in the said complaint is alleged: and this defendant is informed and believes that the allegations in the said com-

plaint, and the exhibit made part thereof, as to the form and amount of the obligations of the said company, are substantially true.

II.—This defendant admits the execution and delivery by the said Erie Railway Company to the defendant, as Trustee, of the mortgage referred to in the said complaint, and dated Feb. 4th, 1874, and known as the Second Consolidated Mortgage of the said company.

This defendant denies that the said mortgage was unlawfully executed and delivered, or that the bonds in the said mortgage specified, and to secure the payment of which the said mortgage was executed or delivered, or any of them, were unlawfully or fraudulently issued, sold, or negotiated.

III.—This defendant has no knowledge and no information sufficient to form a belief as to the truth of the allegations in the said complaint not hereinbefore expressly admitted or denied, and therefore leaves the plaintiff to make such proof thereof as may be advised.

Second.—This defendant, by way of counter-claims, in respect whereof affirmative relief is demanded against the said plaintiff, as well as against all and singular the other defendants in this action, alleges:

I.—That heretofore, to wit, on the 4th day of February, A. D. 1874, the said defendant, the Erie Railway Company, duly executed and delivered to this defendant its certain mortgage, or deed of trust, a true copy whereof is hereto annexed, marked Exhibit "A," and made part of this answer.

The said mortgage was so executed and delivered, in order to secure the payment of bonds of the said company, known as Convertible Bonds, to the amount of ten millions of dollars, each dated the 1st day of January, 1873, and payable thirty years after the date, with interest at the rate of seven per cent. per annum; and also additional bonds of the said company, amounting in the aggregate to thirty millions of dollars, each for the sum of one thousand dollars, dated the 2d day of March, A. D. 1874, and payable twenty years from the date thereof, with interest thereon, payable semi-annually; all of which will more fully and at large appear by the exhibit hereunto annexed, reference thereto being had.

II.—The said mortgage having been so as aforesaid duly executed and delivered to this defendant by the said Erie Railway Company, afterwards bonds, being part of the said thirty millions therein referred to, to the amount of fifteen millions dollars, were duly certified by this defendant, delivered so certified to the said Erie Railway Company, and by that company, as this defendant is informed and believes, from time to time negotiated, and are now outstanding.

This defendant is advised that the bonds so issued do now constitute a valid lien, in law and in equity, for the full amount thereof, both principal and interest.

III.—On the 1st day of June, last past, there became, and was payable, interest on the said bonds according to the tenor thereof, to the amount in the aggregate of five hundred and fifty-three thousand one hundred and ninety dollars and forty cents.

This defendant is informed and believes, and therefore avers, that payment of such interest was duly demanded by the respective holders of interest coupons; that payment thereof was refused by the said company, and that the said company then and there made default in the payment of such interest.

IV.—The mortgaged premises so as aforesaid mortgaged to this defendant are, as this defendant is informed and believes, subject to the prior mortgage liens hereinafter specified, to the extent to which the same are valid and subsisting liens, according to the tenor and effect of the said several mortgages.

1. A mortgage, dated July 1, 1847, to secure certain bonds, whereof there are now outstanding two millions four hundred and eighty-three thousand dollars, payable, with interest, on the 1st day of May, 1897.

This mortgage is known as the First Mortgage, and is first in point of lien.

2. A mortgage, dated March 1, 1849, known as the Second Mortgage, and second in point of lien, to secure certain bonds, of which there are now, as this defendant is informed and believes, about two mil-

lions one hundred and seventy-four thousand dollars outstanding and unpaid, all of which are payable, with interest, on the 1st day of September, 1879.

3. A mortgage, known as the Third Mortgnge, and third in point of lien, dated March 1, 1853, made to secure certain bonds, whereof this defendant says, on like information and belief, there are about four millions eight hundred and fifty-two thousand dollars outstanding, all of which, with interest, will become due and payable on the 1st day of March, 1883.

4. A mortgage, known as the Fourth Mortgage, and fourth in point of lien, dated August 15, 1857, made to secure the payment of certain bonds, whereof, on like information and belief, this defendant alleges there are now about two millions nine hundred and thirty-seven thousand dollars now outstanding and unpaid, all of which will become due and payable, with interest, on the 1st day of October, 1880.

5. A mortgage, known as the Fifth Mortgage, and fifth in point of lien, dated June 1, 1858, made to secure certain bonds, whereof, on like information and belief, this defendant alleges there are about seven hundred and nine thousand, five hundred dollars outstanding and unpaid, all of which will become due and payable on the 1st day of June, 1888.

6. A mortgage dated September 1st, 1870, known as the First Consolidated Mortgage, and which is sixth in point of lien, made to this defendant as trustee.

A copy of this mortgage is annexed to this answer, made part thereof, and marked Exhibit "B."

Under this mortgage, bonds therein described have been duly issued and are now outstanding, as this defendant is informed and believes, to the amount of sixteen millions six hundred and fifty-six thousand dollars, all of which, with interest, will become due and payable on the 1st day of September, A. D. 1920.

7. The last mortgage, and the last in point of lien, is the so-called Second Consolidated Mortgage hereinbefore referred to.

The so-called Convertible Bonds, also secured by the said last-mentioned mortgage, now outstanding, amount, as this defendant is informed and believes, to the sum of ten millions dollars, making the whole amount of bonds now outstanding and secured by the last-mentioned mortgage, twenty-five million dollars.

V.—This defendant is advised, that by reason of the said default, a cause of action has accrued to this defendant, to have the said mortgaged premises duly foreclosed and sold for the satisfaction of the sum so due and unpaid, according to the usual course and practice of the courts of equity in such cases.

VI.—This defendant is further advised that, by reason of the injunction heretofore granted in this cause, and by reason of the nature of this action, and the relief prayed for on the part of the plaintiff herein, as well as by reason of the insolvency of the said defendant, the Erie Railway Company, no further sum of the interest or principal of the said bonds, secured by the said mortgages, whereof this defendant is as aforesaid trustee, will or can be made until and after the sale of all and singular the mortgaged premises, under the order and decree of this Court, and until the amount, due order, and priority of the said liens and other obligations of the said company shall have been duly ascertained, adjudged, and decreed by this Court.

VII.—This defendant is further advised that the rights of this defendant in the premises as Trustee ought not to be injuriously affected, or in any wise prejudiced by the conduct of the said company in the premises, as charged in the said bill, or by the insolvency thereof; and that in equity and good conscience this defendant is entitled to have the usual remedies as against the said company and the said mortgaged premises incident to the said default and forfeiture already existing as aforesaid, and such other and further default as may hereafter accrue.

This defendant therefore prays, the premises considered:

1. That by a proper order of this Court, the Receivership already existing, under and by virtue of

the order of this Court in the premises, may be extended to and made to embrace in terms the two mortgages aforesaid, whereof the defendant is Trustee, and that the Hon. Hugh J. Jewett may be made and confirmed such Receiver, with proper directions.

2. That an account may be directed to be taken of all the bonds now outstanding under the said several mortgages, hereinbefore referred to, including the mortgages whereof this defendant is Trustee, and of the amount justly due in respect thereof; and that to this end a reference may be ordered.

3. That upon the coming in of such account, and the approval thereof by this Court, all and singular the premises embraced in the said mortgages to this defendant may be sold under the said mortgages and under the direction of this Court, and that the premises may be so sold, either in fee or subject to prior encumbrances, as upon the whole shall appear to the Court to be most just and equitable; and that out of the proceeds of the sale the said bonds so outstanding under the said mortgages to this defendant may be paid, principal and interest, in full, and if the said proceeds shall be insufficient for the payment thereof in full, that payment may be made and applied *pro rata*, in due order of priority.

TURNER, KIRKLAND & McCLURE,
Attys. for the Def't, The Farmers' Loan and Trust Co.

City and County of New York, ss.:

ROSEWELL G. ROLSTON, being duly sworn, deposes and says, that he is the President of the Farmers' Loan and Trust Company, one of the defendants in the above entitled action; that the foregoing answer is true of deponent's own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true. R. G. ROLSTON.

Sworn to before me this 9th day of June, 1875.

W. D. SEARLS, No. 76, *Notary Public*, New York County.

No. 24.

SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK, *Plaintiff*, *against* THE ERIE RAILWAY COMPANY, HUGH J. JEWETT, THOMAS A. SCOTT, and others, *Defendants.*	*Answer D. B. Eaton.*

For answer to the amended complaint in this action, D. B. Eaton, one of the defendants therein named, alleges as follows:

1. For answer to the allegations in folios 14 and 15 (in the part numbered II. in the complaint), he avers that among the mortgages subject to which said company (meaning by said company herein, the Erie Railway Company) took title to its property were the mortgages hereinafter referred to as the third, fourth, fifth and supplemental mortgages, each of which are subsisting and valid mortgages on the property, rights and franchises in said mortgages respectively named.

2. As to the allegations of said complaint numbered III. and IV., he avers his belief that large portions of the same are true; but he denies any knowledge or information sufficient to form a belief as to the truth of portions of the statements contained in Exhibit A, referred to at folios 17 and 22 and 23 of said complaint.

3. In reference to portions of that part of the complaint numbered V., and especially to the allegations in the 27th folio thereof, he alleges that among bonds outstanding and guaranteed by said company are those secured by the mortgage hereinafter mentioned, to which this defendant is, as trustee, a party.

4. This defendant denies any knowledge or information sufficient to form a belief, whether any of the allegations contained in the parts of the complaint numbered VI., VII., VIII., IX., X., XI., XII., of the last-named part (so far as the 43d folio), or in the parts numbered XIII. and XIV., are or not true, except he believes that said company now is and for a year last past has been insolvent.

Second.—And for a further answer this defendant alleges:

5 That on and for several years prior to the first day of January, 1865, there was and had been a corporation, duly authorized and existing under the laws of the States of New York and Pennsylvania respectively, and which, as he is informed and believes, still exists, known as the Buffalo, Bradford and Pittsburgh Railroad Company. That the last named company, pursuant to the laws authorizing the same, had, prior to the last named date, constructed and then owned a railroad, which this defendant on information and belief alleges to have then been completed for a distance of from fifteen to twenty miles, and which is now, as he in like manner alleges, completed for a distance of twenty-three and a quarter (23¼) miles, the same extending from Carrolton, on the line of the Erie Railway Company, to Gilesville, in the State of Pennsylvania, being the same road referred to in table E, annexed to the complaint.

That at the date of the making of the mortgage to this defendant and the guaranty hereinafter mentioned the Erie Railway Company was operating the last named railroad under contract or lease, and needed and now needs the same to facilitate the procuring of coal for its use and for transportation.

6. That before and at the time last mentioned, the Erie Railway Company, desiring that money should be raised which was needed to complete and extend said road, requested said Buffalo, Bradford and Pittsburgh Railroad Company to create bonds and mortgage, hereinafter referred to, for the raising of said money, and offered, as a condition of the doing of the same, to guaranty the payment of the principal and interest of such bonds before the issue of the same and to pay the interest and principal of said bonds in case the same should not be paid by the maker thereof.

And, on information and belief, this defendant alleges that a further contract of lease was made between the two last-named companies about the date of said mortgage, and mentioned in said guaranty, in and by which, for valuable consideration to each company, the same being in part the guaranty of said bonds, and the right secured on the part of the Erie Company to control or operate said Buffalo, Bradford & Pittsburgh Railroad, it was agreed that said mortgage bonds and guaranty should be made, and that the Erie Railway should continue to operate said road, and continually, since, until the appointment of Mr. Jewett as Receiver of the last-named company, it has operated said road and paid said guaranteed interest, and the said road is now possessed and operated by said Receiver.

7. That since the creation and guaranty of said bonds, which, each being for $1,000, were in the aggregate amount of two millions of dollars, or thereabouts, a large portion or the same have, as this defendant alleges on information and belief, been converted into the stock or bonds of the Erie Railway Company, and a large portion or the whole of the capital stock of said Buffalo. Bradford & Pittsburgh Railroad Company has been exchanged for or converted into the stock of the Erie Railway Company, so that the two last-mentioned companies are to some extent or wholly consolidated.

But in like manner this defendant alleges that the bonds issued under said mortgage to him are in part—though to what extent he is not informed—still outstanding, with said guaranty thereon, in the hands of *bona fide* owners, and are secured by such mortgage to this defendant, and that the Erie Railway Company is still liable to pay the principal and interest of such outstanding bonds.

And the bonds and stock herein last referred to are a portion of the bonds and stock mentioned in table E, annexed to the complaint.

8. That each of said bonds is for $1,000. That interest on the same, at the rate of seven per cent. for each year, is payable on the 1st day of July and January of each year, and said bonds mature on the first day of January, 1896. That said bonds are secured by a mortgage to this defendant as trustee, made and delivered (and bearing date on the first day of January, 1865) by said Buffalo, Bradford & Pittsburgh Railroad Company, which mortgage was duly recorded in each county in the States of New York and Pennsylvania, in which the mortgaged premises is situated, and said mortgage has since been, and now is, a valid lien upon the franchises, railroad, coal lands, coal, and other property, franchises, tolls and income of the corporation which made the same; and since the making of the same, the Erie Railroad, or its Receiver, has derived considerable tolls and income from the same.

That the property, tolls, income and franchises so mortgaged are in said mortgages, now in the possession of this defendant, described as follows, viz.:

"All the lands and real estate of this company, and the minerals and coals therein situated, in the "State of Pennsylvania, or in the State of New York (south or west of the line or land of the Erie "Railway Company), including the railroad (completed, and to be completed and extended), track, rails, "road bed, fixtures and erections, tenements and hereditaments, tolls, income, profits and franchises of "the party of the first part that may be received, or enjoyed, or derived in the State of Pennsylvania, or "in the State of New York, between the line of the Erie Railway Company and the State of Pennsyl-"vania, together with all the franchises acquired, or which may hereafter be acquired, to be exercised "within the limits aforesaid, in either of said States, all of which are hereby assigned to said party of the "second part, and included in the securities hereby placed in his hands for the payment of the aforesaid "bonds, and the accruing interest thereon, and all the tolls, income, proceeds and profits arising from "the use of said railroad, land, franchises and property."

9. That each of the bonds so issued and outstanding, under said mortgage, as this defendant is informed and believes, has endorsed thereon the guaranty of the Erie Railway Company (bearing its seal and the signature of its then President and Secretary duly authorized), in the following language, viz.:

"By virtue of a lease of the road of the Buffalo, Bradford & Pittsburgh Railroad Company, and "as a part of the rent to be paid therefor, the Erie Railway Company has bound itself to pay the in-"terest coupons and principal of the within bond, as the same shall mature, at its office in the City of "New York.

"As witness the seal of the last-named company, and the signatures of the "President and Secretary, this 5th day of January, 1866.

"R. H. BERDELL, *President*,

"HORATIO N. OTIS, *Secretary*."

On the faith of which said bond was purchased and is held.

10. And this defendant, on information and belief, avers, that it is for the interest of the Erie Railway Company and its creditors to pay the interest on said outstanding bonds and avoid a foreclosure of the mortgage to this defendant, and he prays that the Receiver may be ordered to pay such interest.

Third.—And the defendant, further answering, says:

11. That the Erie Railway Company derived its title to most of the property and franchises it now possesses, whether in New York, Jersey City, or Pennsylvania, including all the main lines of its road, through a purchase under a final judgment in a suit for the foreclosure of the 5th mortgage hereinafter mentioned, upon sale thereunder, leaving said mortgage still a valid lien on said property. That said 5th mortgage, and the mortgage supplemental thereto, as well as the 3d and 4th mortgages hereinafter mentioned, were made by the New York and Erie Railroad Company, when it owned and possessed said property and franchises, which company foreclosed in said suit; and the Erie Railway Company, upon taking said franchises and property, assumed to pay, and is now liable, and by said judgment was made

liable to pay the principal and interest of the bonds secured by each of said mortgages, which remained a valid lien upon the said property and franchises.

12. That said third mortgage was made and bears date on the first day of March, 1853, to secure ten thousand bonds to be issued and signed by said New York and Erie Railroad Company, each for $1,000, with interest at seven per cent. per annum, payable semi-annually, on the first days of March and September of each year.

That of said bonds, $6,000,000, or thereabouts, have been so made and issued, but portions of them have been retired, leaving only about $4,852,000 which, as this defendant is informed and believes, are now outstanding in the hands of *bona fide* owners, and secured by said last-named mortgage. That the trustees of said mortgage are James Brown, now about eighty-four years of age, who is not able, as this defendant is informed and believes, to give attention to the business of said trust, and J. C. Bancroft Davis, now the American Minister at Berlin, and for whom this defendant is authorized to act, as attorney and counsel in said trust, under said fifth and supplemental mortgages, in which said Brown and Davis are also the sole trustees.

And this defendant, on information and belief, alleges, that it is not for the benefit of the holders of the bonds secured by said mortgages that the mortgaged property should be sold under the proceedings in the present suit, or that the trustees should be deprived of the ordinary opportunity to discharge their duty, said bonds being a part of those referred to in Table A, attached to the complaint.

13. That on or about the 15th day of August, 1857, the aforesaid fourth mortgage upon said property, rights and franchises, and dated on that day, was executed and delivered to said trustees, for securing the payment of six thousand bonds of $1,000 each, to be issued and sold by said New York and Erie Railroad Company, bearing interest at the rate of seven per cent. annually, payable on the first days of April and October of each year; of which bonds there are, as this defendant on information and belief alleges, so issued and sold, now outstanding in the hands of *bona fide* holders for value, $2,937,000 in amount, or thereabouts, said bonds being a part of those referred to in Table A, attached to the complaint.

14. That on or about the first day of June, 1858, said New York and Erie Railroad Company executed and delivered its said fifth mortgage, bearing date on that day, for the security of four thousand of its bonds of $1,000 each, and two thousand bonds of $500 each, upon which interest was to be paid at the rate of seven per cent. per annum, payable one-half on the first day of June, and one-half on the first day of December, in each year, for which interest (as was the case as to each of said other bonds) coupons were attached to said bonds respectively. As this defendant on information and belief alleges, there are now outstanding in the hands of *bona fide* holders for value the amount of $709,500 of the last-named bonds, which are mentioned in said Table A.

And to further the payment of said bonds, and as this defendant on information and belief alleges, said New York and Erie Railroad Company executed and delivered to the same trustees a mortgage supplementary to said fifth mortgage, and which supplementary mortgage, dated and executed soon after said fifth mortgage, is mainly upon personal propery, and includes and is a lien upon the personal property acquired by said New York and Erie Railroad Company, and they, the Erie Railway Company, subsequent to the making of said 5th mortgage, and was, as well as said 4th and 5th mortgages, duly filed as a chattel mortgage.

That said 4th, 5th and supplemental mortgages, by reason of said filing, judgment and certain statutes of this State, has remained, and is now a lien upon the rolling stock, material and other personal property of the Erie Railway Company in the hands of its Receiver.

15. That as this defendant, on information and belief, alleges, default was made by the Erie Railway Company and by its Receiver, in the payment of the interest and coupons upon the said fifth mortgage bonds, which fell due and was payable on the first day of June, 1875, and the same remains in default.

16. That this defendant is the owner of bonds secured by said third, fourth and fifth and supplemental mortgages, and of the unpaid coupons properly attached to the same, and has demanded payment of the past-due coupons attached to said fifth mortgage bonds, both of said Receiver and of the Erie Railway Company, and payment of said coupons has been refused by reason of an alleged want of means for making such payment.

That the proper protection of the rights and interests of the holders of said defaulted bonds and coupons requires that a Receiver should be appointed under said mortgage, or that the present Receivership should be extended to and of the property, rights and franchises covered by said fifth and supplemental mortgage, which property and rights and franchises includes all those covered by either of the mortgages prior in date, and also the main lines, and the leases of the road of the Erie Railway Company in and from Jersey City to Lake Erie, at Dunkirk, and in and from Piermont and Newburgh to the last-mentioned line, as well as all after-acquired property, according to the true purport and effect of said fifth and supplemental mortgages, and a large income is derivable from said mortgaged property.

17. Wherefore this defendant prays, on his own behalf, and on behalf of other bondholders similarly situated, who may properly join in this defense of their rights and interest—

(1.) That the holders of said defaulted bonds may be protected by the appointment of a Receiver (or the extension of the present Receivership to and) under said fifth and supplemental mortgages and the property covered thereby.

(2.) That the Court will take and allow such action by this defendant, and by the trustees he represents, as shall adequately secure and protect the property and franchises covered by said third, fourth, fifth and supplemental mortgages.

(3.) That the existing Receivership may be extended to the property covered by said mortgage to this defendant, or such other action be taken as shall protect the bondholders under the last-named mortgage, and secure the payment of the interest on the bonds secured thereby; and

(4.) This defendant may have such other and further relief as he may be entitled to, and the costs of this action.

D. B. EATON, *Attorney in Person.*

City and County of N. Y., ss:

D. B. EATON, being duly sworn, says he has read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, save as to matters therein stated on information and belief, and that as to those matters he believes the same to be true.

D. B. EATON.

Sworn before me, this 15th day of June, 1875.

SOL. HANFORD, *Notary Public*, Kings County.

No. 25.

SUPREME COURT, CITY AND COUNTY OF NEW YORK.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee, *Plaintiff*, *against* THE ERIE RAILWAY COMPANY and against JAMES BROWN and J. C. BANCROFT DAVIS, as Trustees, *Defendants.*	*Trial to be had in the City and County of New York.*

The plaintiff complains of the defendants, and alleges:

First.—The New York and Erie Railroad Company, heretofore existing as hereinafter stated, was a

corporation created under and by virtue of the laws of the State of New York, and also possessed franchises, powers, privileges, and property in the respective States of New Jersey and Pennsylvania.

It was created under and by virtue of an Act of the Legislature of the State of New York, passed April 24th, 1832, and various acts supplemental thereto, for the purpose of constructing, owning and operating a line of railroad for the carriage of freight and passengers between the city of New York and Lake Erie in said State. It built the line of road hereinafter more particularly referred to, forty-two and one-half miles whereof were constructed, and is now situate in the counties of Pike and Susquehanna, in the State of Pennsylvania.

The said company, between the date of its creation and the year 1860, under authority of law, executed various mortgages of its property and franchises hereinafter more particularly referred to. It operated its road until some time in the year 1859, when it became insolvent, and such proceedings were thereupon and thereafter had, that all and singular the property and franchises of the said company were foreclosed and sold, and the defendant the Erie Railway Company succeeded thereto and became possessed thereof.

The defendant the Erie Railway Company is a corporation organized and existing in the State of New York for the purpose of owning and operating a railroad, and conducting the business of a common carrier of freight and passengers.

The said company was created and exists under and by virtue of an Act of the Legislature of said State, passed April 4th, 1860, and of sundry Acts supplementary thereto, from which said Acts as well as from the general laws of the said State in relation to railroad companies, the said Erie Railway Company derives and possesses its franchises, powers and privileges.

The said Erie Railway Company also possesses valuable franchises and privileges and extensive powers, and owns and operates a part of its line of road in the respective States of New Jersey and Pennsylvania, and under and by virtue of the laws of the said States respectively, to which, in this behalf, the plaintiff begs leave to refer from time to time, as occasion may require.

The main line of railroad of said company as originally constructed and operated, extending from Piermont in the State of New York to Dunkirk in the said State, forty-two miles whereof were by authority of the aforesaid Legislatures of the States of New York and Pennsylvania, constructed partly within the County of Pike in said State, and partly in the County of Susquehanna in said State, and is now situate and operated within said counties, the said company having leased certain connecting railroads in New Jersey, hereinafter more particularly referred to, under the authority of the laws of that State, by and over which access was and is obtained by the said company to Jersey City in the said State. The main line of road of the said company, as now operated, extends from Jersey City to Dunkirk aforesaid, a distance of four hundred and fifty-eight ninety-seven one-hundredths miles. The said company is also possessed of leases and leasehold interests of and in other lines of railroad in the respective States of New York, New Jersey and Pennsylvania, and of certain branch roads, all of which it owns and operates in connection with the said main line, and the aggregate number of miles of railroad owned and operated is about nine hundred and fifty-eight ninety-seven one-hundredths miles. A particular description of the leased lines and branches, the terms of years for which the said leased lines are held, and the rental thereof, and also the general location and description thereof are contained in a schedule hereunto annexed, made part of this complaint, and marked "Exhibit A."*

The said company also possesses, as appurtenant to its said railroads, various rights, easements, and privileges, a more particular description whereof the plaintiff is not at this present able to give, but prays leave to set the same forth at large by way of amendment to this complaint, or otherwise, when discovered.

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* NOTE.—See Exhibit No. 29, p. 56, *ante*.

The said company is also possessed of a large amount of engines, cars, rolling stock of various kinds, tools, machinery, machine shops and lands, tenements and hereditaments, all of which are appurtenant to the said railroad, and used in and about the operation thereof and for the general purposes of the aforesaid business of the company, a more particular description whereof the plaintiff is at present unable to give, but begs leave to set forth the same at large when obtained, by way of amendment to this complaint or otherwise.

Second.—On the first day of September, 1870, the said Erie Railway Company lawfully executed and delivered to the plaintiff a certain deed of trust or mortgage of all and singular the premises aforesaid, a true copy of which indenture is annexed to this complaint, made part thereof, and marked Exhibit "B," and the plaintiff prays that it may be taken to be a part of this complaint, to all intents and purposes in the same manner as if the same were here set out at length In and by the said indenture, the said Erie Railway Company conveyed to the plaintiff, subject to certain prior incumbrances therein mentioned, all and singular the railway of the said company from and including Piermont on the Hudson River, to and including the final terminus of the said railway on Lake Erie, a railway known as the Newburgh Branch from Newburgh to the main line, and also all that part of railway designated as the Buffalo Branch of the said railway, extending from Hornellsville to Attica, in the State of New York; and also all other railways belonging to the said company in the States of New York, Pennsylvania, and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges, and rights of the said company, and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood, and supplies of every kind, belonging or appertaining to the said Erie Railway Company, and all the tolls, incomes, issues, and profits arising out of the said property, and all the rights to receive or recover the same; also, all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action, of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company by the Union Railroad Company, by the Buffalo, New York and Erie Railroad Company, by the Buffalo, Bradford, and Pittsburg Railroad Company, by the Rochester and Genesse Valley Railroad Company, and by the Long Dock Company. The said deed of mortgage was made as aforesaid to the plaintiff in trust to secure the payment, according to the tenor thereof, of the bonds of the said Erie Railway Company to the amount in the aggregate of thirty millions of dollars, as will more fully and at large appear by the said indenture hereunto annexed and marked Exhibit "B," as aforesaid.

Third.—Afterward, to wit, on the 4th day of February, in the year 1874, the said defendant, the Erie Railway Company, executed and delivered to the plaintiff a further deed of trust or mortgage, a true copy whereof is hereunto annexed and marked Exhibit "C,"* and the plaintiff prays that the same may be taken to be a part of this complaint to all intents and purposes as fully as if the same were here set out at length.

In and by the same indenture, the said company conveyed to the plaintiff all and singular the premises specified and described in the said indenture of September the 1st, in the year 1870, as security for the payment of other, different, and additional bonds of the said company, to the amount in the aggregate of thirty millions of dollars; also to secure the payment of bonds theretofore issued by the said company to the amount of ten millions of dollars in the aggregate, all of which will fully and at large appear by the said Exhibit "C," to which reference is had.

The said bonds, to secure which the said first-mentioned indenture of September 4th, 1870, was executed and delivered to the plaintiff, were and are each for the sum of one thousand dollars, dated September 1st, 1870, payable in gold coin on September 1st, 1920, with interest in the meantime, payable

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NOTE.—See Exhibit L, No. 1, p. 59, *ante*.

in gold coin at the rate of seven per cent. per annum, payable semi-annually, on the 1st days of March and September.

There were issued, under the said mortgage of the said bonds, bonds to the amount of sixteen million six hundred and fifty-six thousand dollars, and the plaintiff is informed and believes, and therefore avers, that all of such bonds are now outstanding and unpaid, and that current interest thereon has been paid to and including the interest due on the 1st day of March, A. D. 1875.

Of the bonds to secure the payment of which the said indenture of the 4th day of February, A.D. 1874, was executed and delivered to the plaintiff, ten millions were and are dated January 1st, 1863, payable in gold coin January 1st, 1903, with interest in the meantime, at the rate of seven per cent. per annum, payable quarterly on the 1st days of January, April, July, and October in each year. The plaintiff is informed and believes that interest on the said bonds has been duly paid to and including the 1st day of April, A.D. 1875.

Of the said thirty millions of other bonds, the issue of which was provided for in or by the said last-mentioned indenture, there have been issued and are now outstanding, as the plaintiff is informed and believes, bonds to the amount of fifteen million dollars ; each bond is dated March 2d, A.D. 1874, payable March 2d, 1894, in gold coin, with interest in gold coin in the meantime, at the rate of seven per cent. per annum, payable semi-annually, on the first days of June and December of each year. The plaintiff is informed and believes that interest on the said bonds to the amount of five hundred and fifty-three thousand one hundred and ninety dollars and forty cents, became due and payable, and was duly demanded of the said company at the proper offices thereof, on the 1st day of June last past—that payment thereof was then and there refused by the said company, and that the said company then made default, and now is in default in respect to the payment thereof.

Fourth.—At the time of the execution of the aforesaid indentures to the plaintiff as trustee as aforesaid, there had been executed, and there were outstanding, and still are outstanding, as the plaintiff is informed and believes, the following mortgages, embracing a part of the premises so, as aforesaid, mortgaged to the plaintiff, that is to say :

A statutory mortgage, under date of the 1st of July, 1847, to secure the payment of certain bonds of the said company, whereof there are now outstanding, as the plaintiff is informed and believes, bonds to the amount of two million four hundred and eighty-three thousand dollars, payable May 1st, 1897, with interest, in the meantime, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each year.

A mortgage executed and delivered by the said last-mentioned company on the first day of March, A.D. 1849, to William T. Hooker, Joseph Walker, and Uriah J. Smith, to secure certain bonds of the said company, whereof the plaintiff is informed and believes there are two million one hundred and seventy-four thousand dollars now outstanding and unpaid, payable September 1st, 1897, with interest in the meantime, at the rate of seven per cent. per annum, payable semi-annually on the first days of March and September in each year.

A mortgage executed and delivered by the said last-mentioned company on the first day of March, A.D. 1853, to the defendants Brown and Davis, to secure the payment of certain bonds of the said company to the amount of four million eight hundred and fifty-two thousand dollars, dated the first day of March, A.D. 1853, and payable on the first day of March, 1883, with interest, in the meantime, at the rate of seven per cent. per annum, payable semi-annually, and the plaintiff is informed and believes that all of the said bonds are now outstanding and unpaid.

A mortgage executed and delivered by the said company on the 15th day of August, 1857, to the said defendants Brown and Davis, to secure the payment of certain bonds bearing date the said 15th day of August, 1857, payable October 1st, 1880, with interest in the meantime, at the rate of seven per cent. per annum, payable semi-annually on the first days of April and October of each year.

The plaintiff is informed and believes that there are of the said last-mentioned bonds outstanding and unpaid bonds to the amount of two million nine hundred and thirty-seven thousand dollars. The plaintiff is also informed and believes that interest upon all the bonds issued under the prior mortgages aforesaid has been regularly paid by the said company at maturity, and that the said company is not in default in respect to the payment of any part thereof.

A certain other mortgage, known as the fifth mortgage, executed and delivered by the said last-mentioned company on the 1st day of June, 1858, to James Brown and John C. Bancroft Davis, and a supplemental mortgage by way of further assurance on the 12th day of August, A.D. 1859, to secure certain bonds bearing date June 1st, 1858, payable June 1st, 1888, with interest at the rate of seven per cent. per annum, in the meantime, payable semi-annually on the 1st days of June and December of each year; and the plaintiff is informed and believes that there are of these bonds outstanding bonds in the aggregate to the amount of seven hundred and nine thousand five hundred dollars. The plaintiff is also informed and believes that interest to the amount of twenty-four thousand eight hundred and thirty-two dollars and fifty cents became due upon the said bonds on the 1st day of June last past; that such interest was duly demanded at the proper offices of the said defendant, the Erie Railway Company, but payment thereof was then and there refused, and that thereupon the said defendant made default in respect to the payment of the said interest, and has since remained in default in respect thereof.

Fifth.—The plaintiff further alleges that on or about the 26th day of May last past the People of the State of New York, by their Attorney-General, filed an amended summons and complaint in an action theretofore brought against the defendant the Erie Railway Company, and then pending in this Court, and that, thereupon, such proceedings were had that the Hon. Hugh J. Jewett was by this Court appointed Receiver of all and singular the franchises and property of the said Erie Railway Company, including all and every part of the mortgaged premises hereinbefore referred to. A copy of the said amended summons and complaint, and of the several orders touching the said receivership heretofore made in the said action, are hereunto annexed, marked Exhibit "D," and the plaintiff prays leave to refer thereto from time to time, as occasion may require.

The plaintiff was made a defendant in the said action, and has duly answered therein.

On application duly made in the said action on behalf of plaintiff, this plaintiff was granted leave to institute and prosecute this action for a foreclosure of the mortgaged premises.

In the said amended complaint of the People of the State of New York it is, among other things, alleged that the said company is insolvent, and has been insolvent for more than one year last past; that since the month of July, A.D. 1874, to the date of filing the said amended complaint, the net earnings of the said company had been only about the sum of three million one hundred and sixty-three thousand four hundred and fifty-four dollars and nineteen cents; that during the same time the current obligations of the said company for interest and rental amounted to about four million seven hundred and eighty-four thousand nine hundred and eleven dollars; that in addition to such obligations, the floating debt of the said company unsecured and maturing from time to time was, in July, 1874, about five million dollars, which has not been reduced in fact, and only to a certain extent in form, by the application of other moneys borrowed and still unpaid, and that, in fact, the amount of such debt has been increased, and not diminished; that, in truth, the receipts of the said company during the period aforesaid were about four million dollars less than the debts of the said company maturing in the meantime.

The plaintiff is informed and believes that the allegations contained in the said amended complaint in this behalf are true, and that the said defendant, the Erie Railway Company, is entirely insolvent.

The said action on behalf of the People of the State of New York is instituted under the statute in such case made and provided, for the purpose of winding up the said company, and to that end is the prayer thereof; that by reason of the commencement and prosecution of the said action, as well as by

reason of the insolvency of the said company, the said company is unable, as the plaintiff is informed and believes, and will continue to be unable to make good the said existing defaults in respect to the mortgages aforesaid, and to pay subsequently-accruing interest as the same matures and becomes payable, and to pay the principal and interest of the said bonds specified in the respective indentures to the plaintiff according to the tenor thereof; that, by reason of the premises, the plaintiff's rights in the premises are imperiled, and there is imminent danger of waste and diminution of the mortgage security, and the plaintiff as trustee as aforesaid will sustain irreparable loss and damage, unless the prayer of this complaint shall be granted.

In this behalf the plaintiff is advised that, to the extent of the plaintiff's rightful interest in the mortgaged premises, according to the tenor of the said respective indentures, the plaintiff's rights are in law and equity superior to the rights of the People of the State of New York in the premises, and that the plaintiff is entitled to have the said mortgaged premises foreclosed and sold, according to the usual course and practice of Courts in Equity in such practice, for the payment and satisfaction of the respective debts to secure which the said premises were so as aforesaid mortgaged, and also to have the said mortgaged premises sold at such time, and in such manner and under such direction in respect to the disposition of the proceeds, as will fully protect the interest of the plaintiff in the premises.

The plaintiff is further advised that a Receiver should be appointed in this action, and that, the premises considered, the Hon. Hugh J. Jewett, who is already appointed Receiver of all and singular the premises as hereinbefore set forth, should likewise be appointed by this Court Receiver in this action, under a proper order extending the said receivership to this action for the benefit and advantage of the plaintiff; and that the plaintiff is entitled to have in like manner the benefit and protection of all and singular the orders that have heretofore been made in respect to the said receivership of the said Hugh J. Jewett, and that the same should be confirmed as orders in this action, with the same effect to all intents and purposes as if the same had been originally made in this action.

The plaintiff therefore prays that an inquiry may be had and an account taken of and concerning all and singular the premises and property so mortgaged to this plaintiff as aforesaid, in order that it may be fully and at large ascertained whereof the said mortgaged premises consist; that an account may be had and taken of all and singular the bonds and obligations of the said company embraced in and purporting to be secured by the said respective mortgages, that it may be ascertained what amount of the said bonds and obligations are now outstanding and unpaid; that an account may be had and taken as to the amount due in respect of obligations purporting to be secured under and by virtue of the said fifth mortgage of the defendant company; that the mortgaged premises may be foreclosed and sold at such time, at such place, and in such manner as the Court may order and direct, subject to the said several mortgages prior to the said fifth mortgage; and that in the meantime interest may be paid upon the said bonds secured by the said several mortgages prior to the said fifth mortgage lien, and as the same accrues and becomes payable; that the said Hugh J. Jewett may be appointed Receiver in this action, under the said respective mortgages to this plaintiff, and that his said receivership in the premises may to this end be, by proper orders, so extended and made applicable as to fully embrace and protect all and singular the rights of the plaintiff herein and in the said premises; that the orders heretofore made in the action in which the said Hugh J. Jewett was as aforesaid appointed the Receiver of and concerning the mortgaged premises, and his duties as such Receiver, may be in terms extended and made applicable to this action and confirmed herein, to all intents and purposes, as though originally made herein; and that such other orders, in respect of the premises and touching the said receivership herein prayed for, as may be just and proper, may from time to time be made, and that the plaintiff may have leave to apply for such orders as the plaintiff may be advised, and that the Court would grant to the plaintiff such other and further relief in the premises as may be just and equitable.

TURNER, KIRKLAND & McCLURE,

Attorneys for the Plaintiff.

City and County of New York, ss.:

R. G. ROLSTON, being duly sworn, deposes and says that he is the President of The Farmers' Loan and Trust Company, the plaintiff in the above entitled action; that the foregoing complaint is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes the same to be true. R. G. ROLSTON.

Sworn before me this 14th day of June, 1875, }

W. D. SEARLS (No. 76), *Notary Public*, New York County.

No. 26.

At a Special Term of the Supreme Court of the State of New York, held at the Court-House in New York City on the 24th day of September, 1877.

Present—Hon. CHARLES DONOHUE, *Justice*.

THE FARMERS' LOAN AND TRUST COMPANY, *Trustee*, *against* THE ERIE RAILWAY COMPANY and others.	*Order granting leave to serve Amended and Supplemental Complaint.*

On reading and filing the affidavit of David McClure, dated the 24th day of September, 1877, and on consent of the attorneys for the defendants appearing herein, and on motion of Herbert B. Turner, Esq., for the plaintiffs; after hearing W. W. MacFarland, Esq., and Henry A. Tailer, Esq., for the defendants, *It is ordered*,

First.—That the summons, complaint, notice of pendency of action, and all the papers and proceedings in this action, be amended by erasing the names of J. C. Bancroft Davis and James Brown, Trustees, as defendants herein, wherever the same occur.

Second.—That the plaintiff have leave to file, within ten days from the date of this order, an amended and supplemental complaint, a copy of which is hereto annexed; and also have leave to file an amended notice of pendency of action as it may be advised.

Third.—That the following persons and corporations be brought in as defendants, namely: The Erie Railway Company, James H. Bertholf, Elizabeth J. Blair, as administratrix of Nathaniel B. Blair, deceased; James Dwyer, Abram Dwyer, The Farmers' and Mechanics' National Bank of Buffalo, William H. Gurney, Archibald H. Gates, Russell H. Heywood, Alexander Muir, as administrator of Annie Roe, deceased; Orrin O. Olmstead, Robert F. Parker, Lydia Page, Eliza M. Page, as administratrix of Howard M. Page, deceased; George W. Randall, Nicholas Rassel, Aaron Smith, John Siemon, Solomon Schen, George Talbot, Austin Thomas, Patrick Whalen, Charles Zaggel, William Zaggel; and that a supplemental summons be issued requiring them to answer the said amended and supplemental complaint according to law.

Fourth.—That this order shall be and the same hereby is made without prejudice to any orders or proceedings heretofore had in this action; but all and singular the said orders and proceedings are hereby severally ratified and confirmed.

No. 27.

SUPREME COURT, CITY AND COUNTY OF NEW YORK.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee,
Plaintiff,

against

THE ERIE RAILWAY COMPANY, JAMES H. BERTHOLF, ELIZABETH J. Blair, as Administratrix of Nathaniel B. Blair, deceased; James Dwyer, Abram Dwyer, The Farmers' and Mechanics' National Bank of Buffalo, William H. Gurney, Archibald H. Gates, Russell H. Heywood, John Siemon, Alexander Muir, as Administrator of Annie Roe, deceased; Orrin O. Olmstead. Robert F. Parker, Lydia Page, Eliza M. Page, as Administratrix of Howard M. Page, deceased; George W. Randall, Nicholas Rassel, Aaron Smith, Solomon Scheu, George Talbot, Austin Thomas, Patrick Whalen, Charles Zaggel,
Defendants.

Amended and Supplemental Complaint.

The plaintiff, the Farmers' Loan and Trust Company, by Turner, Lee & McClure, its attorneys, craving the benefit and advantage of all and singular the orders and proceedings heretofore had in this action, by leave of the Court, first had and obtained, in addition to its former allegations in the premises, makes this Amended and Supplemental Complaint; and thereupon the plaintiff says:

I.—The plaintiff is a corporation duly created and organized under the laws of the State of New York, with full power and authority, among other things, to assume and execute the trusts and to receive the conveyances hereinafter particularly referred to.

II.—The defendant, the Erie Railway Company, is a corporation duly created and organized under the laws of the State of New York, by virtue of an Act of the Legislature of said State, passed April 4th, one thousand eight hundred and sixty, and of sundry Acts supplementary thereto; from which said Acts, as well as from the general laws of the said State in relation to railroad companies, the said Erie Railway Company derives and possesses its franchises, powers and privileges.

III.—By an Act of the Legislature of the State of New York, passed April 24th, one thousand eight hundred and thirty-two, entitled "An Act to incorporate the New York and Erie Railroad Company," a corporation was created under the name of the New York and Erie Railroad Company, for the purpose of constructing, owning and operating a line of railroad for the carriage of freight and passengers between the City of New York and Lake Erie, in said State. By the said Act and by other Acts of the said Legislature, and by certain statute laws of the State of Pennsylvania, the said corporation, The New York and Erie Railroad Company, was authorized to construct and operate a certain part of its line of railroad, viz., about forty-two and a half miles thereof, through the Counties of Pike and Susquehanna in the said State of Pennsylvania; and the said corporation being thereto duly authorized by the Legislature of the State of New Jersey, also lawfully acquired, at a subsequent date, certain franchises, privileges, powers, and certain leasehold estates, rights, and interests in the said State of New Jersey.

IV.—Afterwards the said New York and Erie Railroad Company created at various dates, by way of mortgage, five separate liens upon its property and franchises, each being created to secure certain bonds of the said company therein particularly described. No part of the principal of these bonds, or of any of them, has yet become due, and interest on all of them has been duly paid according to the tenor thereof.

V.—The said New York and Erie Railroad Company operated its road until some time in the year

1859, when it became insolvent, and such proceedings were thereupon and thereafter had, that all and singular the property and franchises of the said company were foreclosed and sold, and the defendant, the Erie Railway Company, acquired, succeeded to, and became lawfully possessed of the same, including all the property, rights, privileges, and franchises of the said New York and Erie Railroad Company in the respective States of New Jersey and Pennsylvania, title to all of which was subsequently, by the Legislatures of the said States, respectively duly recognized and confirmed to the said Erie Railway Company.

VI.—Afterwards, and on or about the 1st day of September, one thousand eight hundred and seventy, the said defendant, the Erie Railway Company, being so possessed of all the aforesaid property and franchises, and being thereto duly authorized by law, executed and delivered to the plaintiff a certain indenture, wherein and whereby the said company conveyed to the plaintiff, by way of mortgage, all and singular the railway of the said company, from and including Piermont, on the Hudson River, to and including the final terminus of the said railway on Lake Erie, and the railway known as the Newburgh Branch, from Newburgh to the main line; and also all that part of the railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York; and also all other railways belonging to the said company in the States of New York, Pennsylvania, and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the said company; and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood, and supplies of every kind belonging or appertaining to the said company, and all tolls, income, issues, and profits arising out of the said property, and all rights to receive or recover the same; also all the estate, right, title, and interest, terms and remainder of terms, franchises, privileges, and rights of action of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, by the Union Railroad Company, the Buffalo, New York and Erie Railroad Company, by the Buffalo, Bradford and Pittsburgh Railroad Company, by the Rochester and Genesee Valley Railroad Company, and by the Long Dock Company; which said indenture was afterwards duly recorded in each one of the several counties in which the mortgaged premises, or some part thereof, were situate.

A copy of this indenture is annexed to this complaint and made part thereof, and marked "Exhibit A." The said indenture was made to secure certain bonds of the said Erie Railway Company in said indenture particularly set forth and described, whereof the said company issued, at different dates, bonds to the amount of sixteen million six hundred and fifty-six thousand dollars in the aggregate, including those in the said mortgage called convertible bonds, bearing date September first, one thousand eight hundred and sixty-five; all of which bonds, the plaintiff is informed and believes, are now outstanding in the hands of *bona fide* holders, and are secured under and by virtue of the said indenture, according to the true intent and meaning thereof.

VII.—Afterwards and on or about the fourth day of February, one thousand eight hundred and seventy-four, the said defendant the Erie Railway Company, being thereto duly authorized by law, executed and delivered to the plaintiff a certain other indenture, by way of mortgage, wherein and whereby the said defendant company did convey to the plaintiff all and singular the said railway of the said company, from and including Piermont on the Hudson River to and including the final terminus of the said railway on Lake Erie, and the railway known as the Newburgh Branch, from Newburgh to the main line; and also all that part of the railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York; and also all other railways belonging to the company in the States of New York, Pennsylvania and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures,

franchises, privileges and rights of the said company, and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to the said company; and all tolls, income, issues and profits arising out of said property, and all rights to receive or recover the same; also, all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action, of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, by the Union Railroad Company, by the Buffalo, New York and Erie Railroad Company, by the Buffalo, Bradford and Pittsburgh Railroad Company, by the Rochester and Genesee Valley Railroad Company, and by the Long Dock Company.

The said last-mentioned indenture was duly recorded in each of the several counties wherein the said mortgaged premises, or parts thereof, are and were situate. A copy of the said indenture is annexed hereto and made part hereof, marked "Exhibit B."* The said indenture was executed and delivered to the plaintiff by the said defendant, the Erie Railway Company, to secure certain bonds of the said company therein particularly described, viz.: Bonds to the amount, in the aggregate, of Ten million dollars, dated January first, one thousand eight hundred and seventy-three, nine million of which were for the sum of one thousand dollars each, and one million for the sum of five hundred dollars each, payable in gold on the first day of January, one thousand nine hundred and three, with interest at the rate of seven per cent. gold per annum, payable quarter-yearly, on the first days of January, April, July and October in each year; all of which bonds were, as plaintiff is informed and believes, duly issued by the said defendant company, and are now outstanding and unpaid; and also certain other bonds, each for the sum of one thousand dollars, dated the second day of March, one thousand eight hundred and seventy-four, payable in gold on the second day of March, one thousand eight hundred and ninety-four, with interest at the rate of seven per cent., gold, per annum, payable semi-annually, on the first days of June and December in each year. The plaintiff is informed and believes that the defendant company duly issued and delivered bonds of the description last above mentioned to the amount of fifteen million dollars in the aggregate, and no more; all of which bonds to the amount last aforesaid are now outstanding and unpaid; and that the bonds, payment whereof is secured by the said last-mentioned mortgage, and so as aforesaid issued and outstanding, amount in the aggregate to twenty-five million dollars.

On or about the first day of June, one thousand eight hundred and seventy-five, interest became due and payable by the defendant, the Erie Railway Company, upon bonds amounting to fifteen million dollars, the same being the bonds above mentioned, dated March second, one thousand eight hundred and seventy-four, and part as aforesaid of the bonds secured by the said last-mentioned mortgage. Payment of the said interest, as the plaintiff is informed and believes, was duly demanded of the said company at or about the date when the same fell due as aforesaid. Upon such demand the said company then neglected and refused, and ever since has neglected and refused, to pay the same, or any part thereof; and since the first day of December, one thousand eight hundred and seventy-four, the said company has neglected and refused to pay any interest whatever upon the said bonds, and the said default has continued for more than six months. By reason of the said default and the continuance thereof, as aforesaid, the principal, as well as the accrued interest of the said bonds, has become, and the same now is, due and payable, according to the tenor of the said bonds and the said mortgage.

VIII.—Afterwards, and on or about the first day of July, one thousand eight hundred and seventy-five, interest upon the aforesaid bonds of the said company, dated January first, one thousand eight hundred and seventy-three, which bonds amount in the aggregate to ten million dollars, became and was due and payable; and the plaintiff is informed and believes that the payment of such interest was then duly demanded of the said company at or about the date last aforesaid, and upon such demand the said com-

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* NOTE.—See No. 1, Exhibit L, p. 59, *ante*.

pany then refused to pay the same, and has ever since refused, and still does refuse to pay the same, or any part thereof; whereby and by reason of such default as aforesaid, and according to the tenor and true intent and meaning of the said mortgage, the said principal sum of ten million dollars, as well as interest thereon from the first day of April, one thousand eight hundred and seventy-five, has become and now is due and payable to the plaintiff as trustee as aforesaid.

IX.—On or about the first day of September, one thousand eight hundred and seventy-five, interest for one half year upon the said bonds, secured by the aforesaid mortgage to the plaintiff, dated September first, one thousand eight hundred and seventy, and amounting in the aggregate to the sum of sixteen million six hundred and fifty-six thousand dollars, as aforesaid, became due and payable, and the payment thereof was then duly demanded; but the said defendant, the Erie Railway Company, then refused to pay the same, and has not since paid the same; and with the exception of a part of the interest for one half year since accrued, no interest has been paid on the bonds last above mentioned since the first day of March, one thousand eight hundred and seventy-five.

But since the commencement of this action the plaintiff has been advised that, for certain considerations, them thereunto moving, holders of a very large majority in amount of the bonds last mentioned have agreed with holders of a very large majority of the bonds secured by the said mortgage to the plaintiff of February fourth, one thousand eight hundred and seventy-four, to fund and forego the payment of the interest so as last aforesaid due and unpaid, and secured by the said mortgage to the plaintiff of September first, one thousand eight hundred and seventy, of which agreement the plaintiff has been duly notified; and the plaintiff is informed and believes that all or substantially all of the holders of the bonds secured by the said mortgages respectively, will assent to such agreement. The plaintiff has been requested by the said bondholders, parties to the said agreement, not to pursue in this action its right to relief in respect of the said default in the payment of interest upon the said bonds secured by the mortgage to the plaintiff of September first, one thousand eight hundred and seventy; and in pursuance of such request, the plaintiff, not having been instructed or requested by any holder of such last-mentioned bonds to the contrary, does not pursue or prosecute in this action its right to relief in respect of such last-mentioned default.

X.—The amount now due and payable to the plaintiff as such trustee as aforesaid, under the said indenture dated February fourth, one thousand eight hundred and seventy-five, as aforesaid, is twenty-five million dollars, with interest on fifteen million dollars thereof from the first day of December, one thousand eight hundred and seventy-four, and interest on ten million dollars thereof from the first day of April, one thousand eight hundred and seventy-five, together with interest on the interest warrants or coupons representing such overdue interest.

XI.—The plaintiff is informed and believes, that each and all of the defendants herein, as named in the title of this cause, have, or claim to have, some interest in or lien upon the said mortgaged premises as judgment creditors or otherwise, which interest or lien, if any, has in every case accrued subsequently to the lien of the said mortgages above mentioned, and of each and every one of them, and is subsidiary and subject thereto.

XII.—The plaintiff, trustee as aforesaid, brings this action at the request and by the direction of holders of the said bonds, secured by the said indenture of mortgage to the plaintiff of February fourth, one thousand eight hundred and seventy-four, to enforce the remedy and security provided by the said mortgage, and to foreclose the said mortgage, and to cause the said premises to be sold as an entirety at a foreclosure sale thereof, according to the usual course and practice of the Court in such cases, subject to the said mortgage to the plaintiff of September first, one thousand eight hundred and seventy, and subject to the prior mortgages so made as aforesaid by the said New York and Erie Railroad Company. In view of the character of the mortgaged premises hereinbefore set forth, and of the large amount of the indebtedness aforesaid, it is not believed or contemplated by the plaintiff, or the beneficiaries of the plaintiff,

that the said premises, at such foreclosure sale thereof, can or will be sold for more than a small portion of their real value in money; and therefore, the better to protect their interests as mortgaged creditors as aforesaid, the holders of bonds under the said mortgage to the plaintiff of February fourth, one thousand eight hundred and seventy-four, have appointed, or are about to appoint, agents and trustees to attend such foreclosure sale when the same shall take place, and to buy in the mortgaged premises at such sale, for the joint benefit and advantage of such bondholders in case the said agents and trustees should find and consider that such purchase would be for the advantage of such bondholders.

XIII.—No proceedings have been had, at law or otherwise, to the knowledge or belief of the plaintiff, for the recovery of the sums secured by the said bonds, to secure which the said two mortgages were so made to the plaintiff as aforesaid, or for the recovery of any part thereof.

XIV.—The plaintiff is informed and believes that the defendant, the Erie Railway Company, is insolvent, and unable to pay its debts and lawful obligations; that there are judgments of record against the said defendant, in the several Courts in this State, amounting in the aggregate to a large sum of money, which it is unable to pay and satisfy; and further, that the franchises, premises, and other property covered by the said mortgage to the plaintiff, dated the fourth day of February, one thousand eight hundred and seventy-four, are and constitute a wholly insufficient security for the amount of the said bonds to which the said mortgage is collateral.

The plaintiff, trustee as aforesaid, therefore prays that, the premises considered, the usual judgment may be given and rendered for the sale of the mortgaged premises aforesaid, as an entirety, and for the payment of the amount due to the plaintiff, trustee as aforesaid, for principal and interest upon the said bonds and mortgage and costs of this suit, and that the said defendant, the Erie Railway Company, and and all persons claiming under the said company, subsequent to the commencement of this suit, and all other persons, though not parties to this suit, who have any liens by judgment or decree upon the mortgaged premises subsequent to the mortgage to the said plaintiff of February fourth, one thousand eight hundred and seventy-four, or any liens or claims thereon by or under any such subsequent judgment or decree, either as purchasers, encumbrancers, or otherwise, may be barred and foreclosed of all equity of redemption in said premises.

The nature of the mortgaged premises does not admit of their being sold in parcels, but the interest of the plaintiff, as trustee, as well as the interest of the public, requires that the premises should be sold as an entirety, and the plaintiffs therefore pray that such judgment may provide for and direct a sale of the premises as an entirety.

The plaintiff also prays that the Referee appointed in and by the said judgment to make sale of the mortgaged premises, may be therein directed and required to receive from the purchaser or purchasers, in lieu of money, bonds secured by the mortgage under which such sale is had, and the coupons of such bonds, to the extent and amount of the just share and proportion of the purchase-money that would be payable to the purchaser or purchasers out of the proceeds of sale, in respect to such bonds and coupons.

The plaintiff further prays that in and by the said judgment, and for the better assurance of title to the purchaser of the mortgaged premises at such foreclosure sale thereof, the said defendant, the Erie Railway Company, may be empowered, authorized and required to execute and deliver to such purchaser or purchasers, his or their assigns or successors, a deed of confirmation, under the seal of the said corporation, of all and singular the premises sold at such sale.

The plaintiff further prays that it may have such other and further relief in the premises as the nature of the case may require, and as the Court may deem proper and agreeable to equity.

TURNER, LEE & McCLURE,
Attorneys for the Plaintiff.

City and County of New York, ss.:

R. G. ROLSTON, being duly sworn, deposes and says, that he is the President of the Farmers' Loan and Trust Company, the plaintiff in the above-entitled action; that he has read the foregoing Amended and Supplemental Complaint; the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes the same to be true.

Sworn to before me, this 24th day of September, 1877. } R. G. ROLSTON.

JOHN H. HENSHAW, *Notary Public*, New York County.

No. 28.

SUPREME COURT, CITY AND COUNTY OF NEW YORK.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee,

against

THE ERIE RAILWAY COMPANY, and others.

Answer of Erie Railway Co.

The answer of the defendant the Erie Railway Company to the amended complaint of the plaintiff in the above-entitled action.

The said defendant, The Erie Railway Company, by Shipman Barlow, Larocque and MacFarland, its attorneys, admits that the several allegations contained in the plaintiff's Bill of complaint are true.

SHIPMAN, BARLOW, LAROCQUE & MACFARLAND,
Attorneys for Defendant, The Erie Railway Company.

City and County of New York, ss:

AUGUSTUS R. MACDONOUGH, being duly sworn says, that he is the Secretary of The Erie Railway Company, one of the defendants in the above-entitled action; that the foregoing answer is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. AUGUSTUS R. MACDONOUGH.

Sworn before me, this 10th day of October, 1877. }

EDSON D. HAMMOND, *Notary Public*, N. Y. County.

No. 29.

SUPREME COURT, COUNTY OF NEW YORK.

J. C. BANCROFT DAVIS, *Trustee*, *against* THE ERIE RAILWAY COMPANY, THE FARMERS' LOAN AND TRUST COMPANY, and JAMES BROWN, *Trustee*.	*Complaint of J. C. B. Davis, Trustee, &c.*

The plaintiff, for cause of action herein, alleges as follows:

I.—That the defendant, the Erie Railway Company, is a corporation duly created and existing under and by virtue of the laws of the State of New York; and said company has a corporate existence under certain laws of the State of New Jersey, and also a like corporate existence under certain laws of the State of Pennsylvania; that said company, up to the time of the appointment of a Receiver, hereinafter referred to, had, since its organization in 1861, been engaged in the operation of its main lines of railroad, extending from Jersey City and from Piermont, on the Hudson River, in part through the States of New Jersey and Pennsylvania (being in the counties of Pike and Susquehanna in the latter State), but mainly in the State of New York, from said places to Lake Erie, being situated in the counties of Orange, Delaware, Sullivan, Allegany, Cattaraugus, Chemung, Broome, Chatauqua, Tioga, Steuben, and Rockland, and a portion of the property covered by the fifth and supplemented mortgages is situated in the county of New York; and also in the operation of various branch roads and leased lines hereinafter referred to.

That on the 26th day of May last, in a suit brought by the People of this State through their Attorney-General, Hugh J. Jewett, Esquire, was appointed a Receiver of the property, rights, and franchises of the said company, as by the order of appointment will more fully appear, and thereupon said Jewett entered into the possession and has since been engaged in the operation of the roads and leased lines of said corporation, and is now in the possession and engaged in the operation of the same. That the appointment of said Receiver was made, as appears by the complaint and proceedings in said suit, by reason of the said company having been insolvent for more than a year last past, and in said suit no question is raised as to the validity of the fifth and prior mortgages, hereinafter referred to; and the plaintiff on information and belief alleges that suits in aid of that of the People aforesaid have been instituted in the States of New Jersey and Pennsylvania, respectively, and that by orders therein the receivership of said Jewett has been extended to the property and franchises of said corporation in each of said States.

II.—That since the defendant the Erie Railway Company commenced the operation of said lines it has from time to time acquired additional engines, cars, other rolling stock, and supplies and material for the use and operation of its said lines, which property has been used thereon, and is now in the possession of said Receiver, and is necessary for the operation of said roads. That said company has also acquired various rights and interests by way of lease and contract with other corporations, some of which corporations are railroad corporations, which own or operate railroads running in connection with said lines, and other of said corporations are coal, or mining, or other business corporations which have important relations and connections with the corporation defendant, and by statute the corporation defendant has acquired certain additional authority or franchises in one or more of said States; and on information and belief this plaintiff alleges that all said rights and property, whether real or personal, and all

said franchises, by virtue of the provisions of the fifth and supplemental mortgages hereinafter referred to, and of the law thereto applicable, come under and are subject to a lien thereon by or in favor of the said fifth and supplemental mortgages, and the bondholders thereunder interested.

III.—That prior to the 9th day of June, 1860, there existed in the State of New York a duly organized railroad corporation known by the name of the New York and Erie Railroad Company, legally recognized in the other States aforesaid, which corporation owned and possessed the greater portion of the property and franchises hereinafter mentioned, and also operated the main lines of roads hereinbefore referred to, in said States. That said New York and Erie Railroad Company, under certain statutes of the State of New York, issued a series of bonds, in the year 1847, which bonds, being over two millions in amount, are commonly spoken of and are herein designated as the first mortgage bonds, and said statute is spoken of as the first mortgage; that the last named corporation also in the year 1849 executed its certain mortgage, herein and commonly designated as its second mortgage, under which it issued two millions and upwards of its bonds, which are in like manner designated as second mortgage bonds. That in the year 1853 the last named corporation executed a certain mortgage, herein and commonly designated as the third mortgage, under which it issued bonds in the amount of over four millions of dollars, which bonds are in like manner designated as third mortgage bonds. That in the year 1857 the last named corporation executed its certain mortgage, herein and commonly designated as the fourth mortgage, and thereunder issued bonds in the amount of over two millions of dollars. Of said first mortgage bonds there are now, as this plaintiff is informed and believes, outstanding in the hands of *bona fide* holders, in amount $2,483,000; of said second mortgage bonds $2,174,000; of said third mortgage bonds $4,852,000; of said fourth mortgage bonds $2,927,000; which bonds are respectively secured by the mortgages aforesaid, which remain a valid lien upon the property, rights and franchises in said mortgages respectively mentioned, and for the payment of the principal and interest of which the corporation defendant has been, since its organization, and is now, liable. That under said third mortgage (as modified by a subsequent agreement), and under said fourth mortgage, respectively, this plaintiff, and the defendant James Brown, are the sole trustees, and no interest, as this plaintiff is informed and believes, is in arrear upon any of the aforesaid bonds, secured by either the first, second, third or fourth mortgages.

IV.—That on or about the first day of June, 1858, said New York and Erie Railroad Company executed and delivered to said Brown and Davis, as trustees and parties thereto, a mortgage upon the property, real and personal, and rights and franchises and income of the last named corporation, in each of said States, which commonly and is herein designated as the fifth mortgage. It was executed for the purpose of securing an issue of bonds, commonly and herein called the fifth mortgage bonds. Said mortgage provides for the issue of a series of four thousand bonds, of $1,000 each, and two thousand bonds of $500 each, being five millions in all, of a like tenor and date, in and by which it was provided that interest should be paid thereon at the rate of seven per cent. per annum, payable one half semi-annually, on the first days of June and December in each year. Of these bonds there was issued an amount of about two millions of dollars, of which a considerable portion have been retired, so that there is now outstanding of the said bonds, as this plaintiff is informed and believes, only an aggregate amount of $709,500, which are held by *bona fide* owners thereof; and said fifth mortgage still remains a valid and subsisting lien upon the property, rights and franchises therein mentioned, for the security of the bonds last aforesaid.

V.—That the last named corporation, soon after the making and delivery of said fifth mortgage, also executed and delivered to said last named trustees, as parties thereto, for the better securing of the last named bonds, another mortgage, bearing date on the 12th day of August, 1859, commonly and herein designated as the supplemental mortgage; but under this last mortgage no bonds were specially issued, and the same remains a valid, subsisting lien upon the property, rights and franchises therein mentioned; and each of the aforesaid mortgages was duly recorded soon after the date thereof, and still remain of

record in the several counties in which any portion of the mortgaged property is situated, in each of said three States.

VI.—That in or about the month of August, in the year 1859, default having been made by said New York and Erie Railroad Company in the payment of interest upon said fifth mortgage bonds, this plaintiff and his co-trustees instituted a suit in the county of Broome, in the State of New York, against said New York and Erie Railroad Company and others, for the purpose of foreclosing the said fifth and supplemental mortgages; that in and by the complaint in said action, such facts were stated, and thereafter such proceedings were had in said suit that said court acquired jurisdiction thereof, and the same was carried forward to a final decree of foreclosure and sale, which was entered therein in the County of New York, to which the venue had been changed at a Special Term, holden at the City Hall therein, on the 9th day of June, 1860, wherein and whereby said New York and Erie Railroad Company, and all persons having any lien on said mortgaged property were foreclosed, and said property was ordered to be sold by a referee appointed by said Court, for the purpose of procuring the means of paying the judgment entered in said suit in favor of the holders of the said fifth mortgage bonds, and others whose interest was in arrear. And pursuant to such judgment, a sale of said mortgaged property, rights and franchises was made, in and by which, and certain intermediate sales and transfers, said property, rights and franchises so mortgaged came into the possession and ownership of the Erie Railway Company.

VII.—That in and by two Acts of the Legislature of the State of New York, one entitled "An Act relating to the foreclosure and sale of the New York and Erie Railroad," passed April 4th, 1860, and the other entitled "An Act in addition to an act relating to the foreclosure and sale of the New York and Erie Railroad," passed April 2d, 1861, provision is made for the creation of a new corporation for the purpose of acquiring the property, rights and franchises so foreclosed, and under the provisions of said act certain articles of association were formed on or about the 30th day of April, 1861, in and by which certain persons, in conformity thereto, formed themselves into a railroad corporation under the name of the Erie Railway Company, which is the corporation defendant. And thereupon, having acquired said property, rights and franchises by virtue of the sales and transfers aforesaid under said foreclosure, said new corporation entered into the possession and enjoyment of said property, and to the exercise of said franchises.

VIII.—That at or near the dates of said judgment of foreclosure in the State of New York, such proceedings were taken in certain suits instituted in the States of New Jersey and Pennsylvania, respectively, in aid of said foreclosure, that final judgments were entered therein near said dates, in and by which it was adjudged that said New York and Erie Railroad Company and all persons having subsequent liens to that created by said fifth and supplemental mortgages upon said property, rights and franchises, be, and they were, in each of said States, thereof foreclosed; and it was further adjudged in each of said States, as this plaintiff on information and belief alleges, that said property, rights and franchises should be treated in each of said States as having passed to the purchaser by virtue of the sale and transfers in the State of New York; and on information and belief this plaintiff further alleges that in each of said three States, and in the several suits aforesaid, orders of confirmation were duly made after said sale, whereby the title thereby transferred and the action in execution of such final judgments was established and confirmed.

IX.—And on information and belief this plaintiff further alleges that in the State of New Jersey the acts and proceedings aforesaid in that State were authorized and confirmed by an act approved by the Governor thereof on the 22d day of March, 1860; and that in the State of Pennsylvania the acts and doings aforesaid therein were authorized and confirmed by an act of the last named State, approved by the Governor thereof on the 22d day of March, 1860.

X.—That, as this plaintiff is informed and believes, said several judgments of foreclosure and confirmation, as will be shown by the production thereof, retained and recognized the continued validity and lien of said fifth and supplemental mortgages upon said property, rights and franchises, for the continued

security of the bonds thereby secured and which remained and still continued outstanding, and by a statute of the State of New York the said fifth mortgage is made a continued lien upon the personal property of the corporation defendant, without continued filing of the same as a chattel mortgage.

XI.—That after the organization of the said corporation defendant, the Erie Railway Company, and its entering into the possession of said property and the exercise of said franchises, said corporation continued to run and operate said several lines of road in said three States down to the time of the appointment of said Jewett as Receiver, and paid the interest as it matured upon said outstanding fifth mortgage bonds, until the first day of June instant, when default was made upon the payment of the interest which matured on that day, and though, as the plaintiff on information and belief alleges, demand was duly made for the payment of interest on said coupons, or a portion thereof, the same was not paid and interest still remains in default, by reason of the want of means on the part of the corporation defendant and of said Receiver to make such payment.

XII.—That the property, right, and franchises which were ordered to be sold and which were sold under said judgments of foreclosure, was, as appears by the final judgment ordering the sale in the State of New York, so made on the 9th day of June, 1860, the following, viz.:

All and singular the railroad of the said New York and Erie Railroad Company, and now in the possession of the Receiver, from and including Piermont, on the Hudson River, to and including the final terminus of said railroad on Lake Erie, and that part of said road known as the Newburgh Branch, from Newburgh to the main line, together with the lands, tracks, lines, rails, bridges, ways, buildings, piers and wharves, erections, fences, walls, fixtures, privileges, franchises, rights, and all the real estate and leasehold property which were of the said company, of every kind, in the States of New York, Pennsylvania, and New Jersey, on the first day of June, A. D. 1858; and all the tolls, incomes, issues, and profits to be had from the same, and all rights to receive or recover the same, and all railway stations and depots, with the appurtenances necessary for the complete use of the road. Also all the locomotives, engines, tenders, cars, carriages, tools and machinery belonging or appertaining to said railroad. Also all the estate, right, and property, terms, and remainder of terms, franchises, and privileges, and rights of action of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York and Erie Railroad Company, by the Union Railroad Company, by an indenture bearing date September 10th, 1852, being the railroad of the Union Railroad Company, as it then existed, and all the land and real property forming or connected with, or appurtenant thereto, and all the rails, tracks, bridges, culverts, viaducts, turnouts, switches, fixtures and superstructures of every kind connected therewith; and all their buildings, erections, depots, stations, station-houses, offices, factory shops, and edifices on, or adjacent to, or connected with, or appurtenant to said road; and all the estate, right, title, interest, possession, and demand of the said Union Railroad Company, of and to the premises, and every part and parcel thereof, the rights, privileges, franchises, titles, power and properties of the said Union Railroad Company, with the right to transport persons, mails, and property over the said Union Railroad, and charge, demand, collect, and receive tolls for the transportation of persons, mails, and merchandise, and other estates and rights, all of which are fully described in said indenture. Also an indenture of lease, bearing date the ninth day of September, A. D. 1852, made by and between the President and Directors of the Paterson and Hudson River Railroad Company and the Union Railroad Company; and also an indenture of lease, bearing date the ninth day of September, A. D. 1852, made between the Paterson and Ramapo Railroad Company and the Union Railroad Company, together with all and singular the premises therein mentioned and described, and the buildings thereon, and the property, real and personal, with the appurtenances, in the said two indentures, and each of them, demised, conveyed and transferred for and during all the rest, residue and remainder then to come of and in the terms respectively mentioned in the said indenture of lease, subject to the conditions, rents, covenants, provisions and agreements in the said indentures respectively contained. Also all the estate,

rights, interest, title, and property, in law and equity, of the New York and Erie Railroad Company, or in the possession of the Receiver under the fifth mortgage, in and to every matter and thing, estate, and property, terms, and remainders of terms, franchises, privileges and appurtenances of whatsoever name and nature, conveyed by the several aforesaid indentures of lease to the Union Railroad Company, or any of them, being:

1st. An indenture, made on or about the ninth day of September, A. D. 1852, between the President and Directors of the Paterson and Hudson River Railroad Company, of the State of New Jersey, parties of the first part, and the Union Railroad Company, parties of the second part, whereby the railroad of the President and Directors of the Paterson and Hudson River Railroad Company, as it then existed, with all the land and real property forming or connected with or appurtenant thereto, from and including its terminus and station at and in the City of Paterson and County of Passaic and State of New Jersey, to and including its terminus and station at and on Bergen Hill, in the County of Hudson and State of New Jersey, at the junction of the railroad of the New Jersey Railroad and Transportation Company, and its rails, bridges, culverts, viaducts, turnouts, switches, fixtures and superstructures on, adjacent to, connected with or appurtenant thereto, and all its buildings, erections, depots, stations, station-houses, offices, shops and superstructures on or adjacent to the said road, and all the estate, right, title, claim and demand of the said Paterson and Hudson River Railroad Company of, in and to the same, and every part and parcel thereof, and all its rights, privileges, franchises, titles, power, property and claim, and tolls, and right to receive the same, and all its cars, engines, tolls, and all its rights and pretensions to charge, demand, collect and receive tolls for the transportation of property, persons and merchandise, were granted, bargained, sold, demised, and to farm let unto the said Union Railroad Company, their successors and assigns, for and during the continuance of the charter of the said The President and Directors of the Paterson and Hudson River Railroad Company, with covenants for renewal, and certain agreements and covenants, by the New Jersey Railroad and Transportation Company, were, by the same instrument, assigned to the said Union Railroad Company, as will more fully appear by reference to said last-named indenture, upon certain terms therein more fully set forth, which said lease was on or about the tenth day of September, A. D. 1852, assigned by the said Union Railroad Company to the said The New York and Erie Railroad Company, with the assent of the said President and Directors of the Paterson and Hudson River Railroad Company.

2d. Another indenture entered into on or about the ninth day of September, A.D. 1852, whereby the said the President and Directors of the Paterson and Hudson River Railroad Company made certain agreements with the said Union Railroad Company for laying down a third rail upon the road-bed of the New Jersey Railroad and Transportation Company, for the use of the New York and Erie Railroad Company, as will more fully appear by reference thereto, which said last named indenture was assigned to the New York and Erie Railroad Company, by the Union Railroad Company, with the assent of the said the President and Directors of the Paterson and Hudson River Railroad Company.

3d. A certain other indenture made on or about the ninth day of September, 1852, for certain considerations and on certain terms therein fully set forth, whereby the said Paterson and Hudson River Railroad Company granted, bargained, sold, and demised, and to farm let, unto the said Union Railroad Company, their successors and assigns, all and singular the depots, lands, and real estate of the said the President and Directors of the Paterson and Hudson River Railroad Company in Jersey City, with the appurtenances, for the term of two years from September 15th, 1852, with covenants for renewal, which said lease was afterwards assigned to the said New York and Erie Railroad Company, with the assent of the said the President and Directors of the Paterson and Hudson River Railroad Company, and hath since been renewed.

4th. A certain other indenture, made on or about the ninth day of September, A. D. 1852, between the Paterson and Ramapo Railroad Company of the State of New Jersey of the first part, and the said

Union Railroad Company, parties of the second part, whereby the said Paterson and Ramapo Railroad Company granted, bargained, sold, demised and to farm let unto the said Union Railroad Company, their successors and assigns, for and during the continuance of the charter of the said the Paterson and Ramapo Railroad Company, with covenants for renewal, the railroad of the said lessors, and all the land or real property forming or connected therewith, or appurtenant thereto, and their rails, tracks, bridges, culverts, viaducts, turnouts, switches, fixtures, and superstructures on, adjacent to, connected with, or appurtenant to their said road; and all their buildings, erections, depots, station-houses, stations, offices, factories, shops and edifices on, or adjacent to, or connected with or appurtenant to the said road; and all the right, title, interest, claim and demand of the said Paterson and Ramapo Railroad Company of, in and to the same, and all their rights, claims, privileges, franchises, title, powers, property, claim and pretensions to transport persons, mails and property of every description. Also all the improvements made by the said New York and Erie Railroad Company to any or all of said properties or estates; also the depot grounds upon the lands of the Long Dock Company, being all the lands of the said Long Dock Company which lie east of Provost street, in Jersey City, and north of a line drawn along the centre of Pavonia avenue, from Provost street to the east of Hudson street, and of a line sixty feet south of and parallel to the centre of Pavonia avenue, on the east of the east side of Hudson street, and the rights which the New York and Erie Railroad Company have, or hereafter may have or acquire, or which are in the possession of the Receiver under the fifth mortgage in the piers or wharves to be constructed north of Pavonia avenue, upon or against the land of the said Long Dock Company, and in any ferries which may be maintained therefrom to the City of New York; also the right for ever to use the road-bed, tracks, sidings, turnouts and switches to be constructed from the present line of the New York and Erie Railroad, unto the said depots on the lands of the Long Dock Company (but no other lands of the Long Dock Company are included in the sale, nor is the fee in the said road-bed or track included, it being provided by the mortgage that all the lands of the Long Dock Company not therein specially included shall be unincumbered thereby, and that the lands over the tunnel through which the track is laid shall also be unincumbered, except as to the right to maintain and use such track). Also a certain agreement made between the Long Dock Company and the New York and Erie Railroad Company, by indenture, dated July 1st, 1856, relative to the construction of docks, piers, wharves, railway tracks, cuts, tunnels, switches, depots, storehouses and other structures, buildings and machinery upon the land of the Long Dock Company. Also all and singular all the estate, fixtures, privileges, franchises, easements, rights, leases, terms and parts of terms, agreements, covenants and property of every kind, conveyed to or intended to be conveyed to James Brown and J. C. Bancroft Davis, by an indenture dated August 15, 1857; together with all the property and estate of every kind, on the first day of June, 1858, by the New York and Erie Railroad Company possessed, or thereafter to be acquired by them.

Also, all and singular, all the estate, fixtures, privileges, franchises, easements, rights, leases, terms and parts of terms, agreements, covenants and property of every kind conveyed or intended to be conveyed by the said indenture, dated August 15, 1857, unto the said Brown and Davis, together with all property and estate of every kind, on the 12th day of August, 1859, possessed or thereafter to be acquired by the said New York and Erie Railroad Company, and also all the property, choses in action, rents, profits and income conveyed or intended to be conveyed or mortgaged by the mortgage made by said company to said Brown and Davis, dated June 1, 1858.

Also, all the personal property and chattels belonging to the said The New York and Erie Railroad Company, or in the possession of the Receiver, under the fifth mortgage, including the following, namely: 162 passenger cars (first class), numbered 1 to 115; 52 emigrant cars, numbered 1 to 77; 51 baggage cars, numbered 1 to 76; all the caboose, smoking, express and milk cars; 1,281 box cars, numbered 1 to 2,854; 1,086 platform cars, numbered 61 to 2,980; 357 cattle cars, numbered 10 to 2,853; 21 six-wheel cars; 13 four-wheel cars; 15 eight-wheel cabooses; 219 locomotives, numbered 1 to 225,

which is the rolling-stock of the New York and Erie Railroad Company, now in use on said road, branches, connecting roads and the roads leased to said company, including in each case the numbers above given, and all existing numbers between; also the steamboats New Haven and Erie, with their respective engines, boilers, machinery, boats, and appurtenances; and the barges Samuel Marsh, Henry Suydam, Jr., Dunkirk, Rockland, Canisteo, Chemung, Buffalo, Eastern, Ohio, and Splendid, with their respective appurtenances; also, all the passenger cars, box cars, cattle cars, flat cars, baggage and mail cars, second class passenger cars, dumping cars, grampus cars, and locomotives named in Schedule C, attached to a chattel mortgage from the said The New York and Erie Railroad Company to Daniel Drew, dated June 27, 1857; also, all the benches, lathes, anvils, forges, hammers, planing machines, tires, axles, wheels, steel, iron, copper, tin, hose, lumber, springs, chairs, frogs, car-castings, babbit metal, spelter, antimony, coal, sand, iron pipe, brass and engine and other castings, with all the other tools, materials and machinery now in or about the machine shops of the said The New York and Erie Railroad Company at Piermont, Paterson, Port Jervis, Susquehanna, Elmira, Oswego, Hornellsville, Deposit, Dunkirk and Newburg, and the other shops of said Company along the line of said road and the roads leased to said Company; also all the wood and coal belonging to the said The New York and Erie Railroad Company, on the 12th day of August, 1859, at the several stations at the ends and along the lines of said road and the roads leased to said Company, and along the line of said roads, and in the yard, and about the shops and elsewhere belonging to the said Railroad Company on the 12th day of August, 1859, in the States of New York, New Jersey, Pennsylvania or elsewhere; also, all the ties, chairs, spikes, hand-cars, rails, lumber, and other implements and materials belonging to the said The New York and Erie Railroad Company, on the 12th day of August, 1859, and now situate along the line of said road and the roads leased to it; also, all the furniture, paper, stationery, wood, coal, timber, printing-presses, types and printing materials, telegraphic apparatus, wires and fixtures belonging to said Company on the 12th day of August, 1859, and situate in the City of New York, and at the several stations and along the line of said roads; also, all the stock implements, tools, and all other goods and chattels whatsoever of the New York and Erie Railroad Company, or in the possession of the Receiver under the fifth mortgage in the States of New York, New Jersey and Pennsylvania.

And said property, rights and franchises, as this plaintiff on information and belief alleges, still remain in the possession and control of the defendant the Erie Railway Company, or its said Receiver, and subject to the lien of said fifth and supplemental mortgages. And the plaintiff in like manner alleges that the property, franchises and rights acquired since the entering of said final judgment, or now owned or held by said defendant, the Erie Railway Company, or by its Receiver, are, by virtue of the provisions of said fifth and supplemental mortgages, and of said statutes making them a lien upon after-acquired personal property, subject to the lien of said two last mentioned mortgages, and are liable to be foreclosed and sold hereunder for the security of the mortgage of said fifth mortgage bonds, and to obtain the means of paying the interest now in arrear thereon, which the said defendant, The Erie Railway Company, is by reason of insolvency at present unable to pay, and no proceedings at law, as this plaintiff is informed and believes, have been taken for the recovery of such interest in arrear.

XIII.—And on information and belief this plaintiff further alleges that, by reason of his advanced age, the said James Brown, his co-trustee, contemplates a resignation of his trust, and does not wish to take any active part, if indeed to take any part whatever, in this proceeding, and for these reasons he is made a party defendant herein.

XIV.—As this plaintiff is informed and believes, the Farmers' Loan and Trust Company is named trustee in one or more mortgages under which it claims a lien upon certain of the property covered by said fifth and supplemental mortgages.

XV.—And by reason of the premises this plaintiff claims judgment and relief as follows :

(1.) That the plaintiff and his co-trustee may be let into the possession and enjoyment of the mortgaged premises, as is authorized by the provisions of said fifth and supplemental mortgages

(2.) That a Receiver may be appointed of the property, rights and franchises, and of the tolls and income thereof, embraced in the last mentioned mortgages, with authority to run and operate said roads, and to use the said property, its tolls and income, for the payment and protection of those secured by said prior and last mentioned mortgages.

(3.) That an account may be taken of the property covered by the said fifth and supplemental mortgages, and of the bonds outstanding and secured by said fifth and supplemental mortgages, and the names of the lawful owners and holders thereof be ascertained and determined, and that proper payments of any sums due by reason of said bonds, or the coupons thereto attached, may be authorized and made.

(4.) That a final judgment of foreclosure against the defendants, and a sale in this suit, and upon said fifth and supplemental mortgages, may be adjudged, providing either for the payment and satisfaction of the bonds secured thereby, or for the payment of interest in arrear, and the continuance of said fifth and supplemental mortgages with a lien for the protection of the bonds thereby secured, and which may be still left outstanding, as in said former foreclosure suit.

(5.) That out of the proceeds of the sale of said property, or portions thereof, and from the tolls and income of the same, a proper allowance may be made to the trustees respectively under said fifth and supplemental mortgages, and for the expenses of this suit.

(6.) That the plaintiff and his said co-trustee may have all such further and other relief and judgment in the premises, including any order of injunction which may be needful, as the practice of this Court and justice in the premises may require.

HENRY A. TAILER, *Plaintiff's Att'y.*

County of New York, ss. :

HENRY A. TAILER, of said city, being duly sworn, says that he is the attorney for the plaintiff in the above entitled action : that he has read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true. Deponent further says, that the reason why the verification is not made by the plaintiff is that he is not within the county of New York, which is the county where deponent resides ; that this deponent's knowledge is derived from the mortgages in suit and other sources of personal knowledge, and that the grounds of his belief are statements made to this deponent and other sources of information. HENRY A. TAILER.

Sworn to before me, this 14th day of June, 1875, }

HENRY ARDEN, *Notary Public*, Kings County.

No. 30.

SUPREME COURT, COUNTY OF NEW YORK.

J. C. BANCROFT DAVIS, Trustee,

against

THE ERIE RAILWAY COMPANY, THE FARMERS' LOAN AND TRUST COMPANY, and JAMES BROWN, Trustee.

Order Appointing Receiver.

At a Special Term of the Supreme Court of the State of New York, held at the Court House in the City of New York on the fifteenth day of June, 1875.

Present—Hon. CHARLES DONOHUE, *Justice.*

A motion by the plaintiff in this suit for the appointment of a Receiver of the mortgaged property, franchises, and rights of the Erie Railway Company, one of the defendants herein, and a New York corporation, founded upon the sworn complaint herein, and upon the affidavits of Henry A. Tailer, sworn to on the fourteenth day of June, 1875, coming on to be heard, and it appearing that due notice of such motion has been served, and due service of the summons and complaint made upon the Erie Railway Company, and the last named corporation now appearing upon said motion by William W. Macfarland, Esquire, as its attorney, and Henry A. Tailer appearing on behalf of the plaintiff for said motion; and it further appearing that the fifth and supplemental mortgage mentioned in the complaint, and dated respectively on the first day of June, 1858, and the 12th day of August, 1859, were duly executed and delivered, and are valid instruments according to their purport; and that bonds have been issued thereunder which are now outstanding, and that default has been made in the payment of interest by the Erie Railway Company, all as in the complaint alleged, and that said two mortgages are a lien on the property, interests, franchises, and rights of the last named corporation, according to the purport of said mortgages; that the interest upon said bonds is due and unpaid since the first day of June now last past, and that the said corporation has not the means of paying said interest, and that the proceeds and profits of said mortgaged property that should of right go to pay said interest may be, but for the protection of a receivership, diverted to other purposes, and that it is proper for the trustee party plaintiff to institute this suit.

And it appearing that the said The Erie Railway Company is in a condition of insolvency, and that a Receiver ought to be appointed to take care of and operate the mortgaged road and property, or the present receivership be extended for the protection of those secured by said mortgages.

Now, on motion of Henry A. Tailer, attorney for the plaintiff herein, it is ordered:

I.—That the authority of the Hon. Hugh J. Jewett, now by him possessed, to operate the road and lines of the defendant, the Erie Railway Company, and so forth, as Receiver of the same, be also possessed by him in this suit, and as Receiver under the fifth and supplemental mortgages mentioned in the complaint in this suit, so far as the same affects the mortgaged property, rights, or franchises therein mentioned.

II.—That, for the special protection of those secured by said morgtgages in their legal and equitable rights, said Jewett is hereby appointed Receiver of the roads, property—real and personal—leases, title-deeds, books and contracts, rights, tolls, income, and franchises, mentioned in or covered by either of said mortgages, or upon which either is a lien, wherever situated (but, if in other States, subject to the laws thereof and to the proper orders of the courts therein); and that, as such Receiver, he is hereby authorized: (1) to demand, receive, and enforce possession of whatever he is hereby appointed Receiver;

(2) to run and operate the roads and lines of said Erie Railway Company, or by it possessed at the date of his receivership, or covered by either of said mortgages, and collect the tolls, income, and profits of the same; (3) to preserve in possession, and keep in good condition and repair, said road and property, and protect the title of the same, and that he pay the interest as it becomes due on the bonds secured by mortgages prior to said fifth mortgage; (4) to employ and pay such persons as he may find reasonably necessary and most useful in and about the discharge of the duties of a Receiver hereunder, and to dismiss the same; (5) to make and enforce appropriate contracts for limited periods, which shall be adapted to promote the efficient and economical operation of said roads; (6) to adjust and pay taxes, assessments, charges, rents, and ticket and freight balances, and other expenses in and about the proper operation of said roads, and the protection of the mortgaged property; (7) to take and institute, as he may deem needful, whatever suits or proceedings he may, by counsel, be reasonably advised to be necessary and proper in the appropriate discharge of his duty as Receiver, and to defend and resist any suit or proceedings which he shall be so advised and shall believe would otherwise be prejudicial to the property, interests, or franchises committed to his charge; (8) to do such acts and make such payments as may be necessary to preserve the corporate existence of the Erie Railway Company; and, generally (9), to do and cause to be done, in a lawful manner, as Receiver, whatever may be reasonable, needful, and appropriate in and about the care, protection, and preservation, in an economical manner, of the rights, interests, or franchises on which said mortgages, or either of them, are a lien, or the discharge of his duty as Receiver may render needful; but nothing in this general authority contained shall authorize said Receiver to do any act which the Erie Railway Company might not, but for its insolvency, have lawfully done, except as herein specifically authorized, nor to pay for supplies, or material, or wages due or procured, or any other debt due more than four months before the making of this order, nor to ratify or give validity to any corrupt or illegal contract or undertaking, nor to change the priority of any claim or lien upon, or divert the income of, the mortgaged premises, for the benefit of any junior claimant.

III.—That said Receiver file a bond (conditioned for the faithful discharge of his duty as Receiver) in the sum of $500,000, with sureties, and in form to be approved by a Justice of this Court, and that upon the filing of such bond he be deemed fully qualified as a Receiver hereunder.

IV.—That as soon as practicable, after entering upon the discharge of his duty, the Receiver file an inventory, under oath, giving a correct and adequate description, as he may be able, of all the property, rights, interests, and franchises mentioned in or covered by said mortgages, or either of them, of which he is hereby appointed Receiver; but the real estate may be described in a general manner only.

V.—The Receiver shall keep such adequate records of his acts, and especially such full, clear, and complete accounts of all moneys by him received and paid out, and from what source and for what purpose, that the propriety and legality of his action in these regards may at all times appear, and he shall preserve proper vouchers for all payments. All money on hand, not needed for present use, shall be kept in one or more banks or trust companies, of approved credit, in the City of New York, to his credit as Receiver, and all payments shall be made, so far as reasonably practicable, by, and all money be drawn thence by or upon check, in his name as Receiver.

VI.—And it appearing to the Court that the duties of the Receiver must be so complicated, and his payments must be so numerous and intricate, and so difficult to be explained after the elapsing of a considerable time, when some of his agents may have left, and that a prompt judgment of the Court thereon is expedient and just to said Receiver, and to the parties in interest, it is further ordered:

(1.) That James C. Spencer, Esquire, Counselor-at Law, be and he is hereby appointed a referee, to pass, decide, and report upon the accounts and vouchers and doings of the Receiver, which may be rendered to be passed before him, and to take testimony and report upon any other question or matter which under this order may be brought before such referee.

(2.) That in case of any question or matter within the authority of the Receiver, under this order, to

decide or take action upon, as to which he shall desire information under oath, he may offer to have the same referred to said referee; and in case the other parties in interest shall so consent, testimony may be taken before such referee, who may report the facts with his views to the Receiver, who may use any testimony so taken, and such report, in making his decision; but the views of such referee and such report shall in no way bind such Receiver.

(3.) Said Receiver may at any time and from time to time, on eight days' notice to the parties hereto, or such less notice as may be accepted of an intention so to do, present his accounts and vouchers for any particular period not less than one month, to be in the notice mentioned, to such referee, at a time and place to be in said notice stated, for examination, adjustment and allowance; and said referee shall proceed in their examination, and, in regard to proof affecting their correctness, according to the practice in cases of other similar accounts, and he shall proceed with all dispatch consistent with giving those objecting a fair opportunity to be heard.

All objections to such accounts shall be made before such referee in writing, with reasonable precision and within such reasonable time as the referee shall fix, and shall, in a general way, state the grounds of the objection to any item. After hearing the parties, any proper evidence offered, and the Receiver's answer to any objections, the referee shall speedily report to this Court the facts proved, and his opinion as to the items disputed; and any parties so objecting to such account may take exceptions in writing to any portion (referring to items so objected to) of said report, and he shall state the grounds of his exception. Unless in special cases where, in the opinion of the referee, an original voucher ought to be brought before this Court, the original vouchers and papers may be returned to the Receiver for his protection, and only copies of those disputed may be attached to the report; but the report shall clearly show the period covered by such accounting.

(4.) And all vouchers and payments not so in writing objected and excepted to, as well as all the actions of said Receiver so brought before said referee, and not disputed there, and the decision and report of said referee so far as not excepted to by any party, or by the Receiver, shall be deemed final and conclusive upon all parties, and upon the Receiver; and such accounts, vouchers, and payments shall not be liable to be again called in question.

VII —The Receiver is at liberty at any time to apply to this Court for further instructions and authority in and about the discharge of his duty.

(A copy.) WM. WALSH, *Clerk.*

No. 31.

At a Special Term of the Supreme Court of the State of New York, held at the Court House, in the City of New York, on the 21st day of March, 1879.

Present—Hon. CHARLES DONOHUE, *Justice.*

J. C. BANCROFT DAVIS, Trustee,

against

THE ERIE RAILWAY COMPANY, THE FARMERS' LOAN AND TRUST COMPANY, and JAMES BROWN.

On reading and filing consent to the entry of this order, signed by the attorneys for the respective parties who have appeared therein, and on motion of Shipman, Barlow, Larocque & MacFarland, attorneys for the defendant the Erie Railway Company,

It is ordered that this action be, and the same is hereby discontinued, without costs to any of the parties as against the others.

(A copy.)

HUBERT O. THOMPSON, *Clerk.*

No. 32.

NEW YORK SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE ERIE RAILWAY COMPANY, HUGH J. JEWETT, THOMAS A. SCOTT, The Farmers' Loan and Trust Company, J. C. Bancroft Davis, Horatio N. Otis, Dorman B. Eaton, James Brown, and others.

J. C. BANCROFT DAVIS, Trustee,
against
THE ERIE RAILWAY COMPANY and others.

THE FARMERS' LOAN AND TRUST COMPANY
against
THE ERIE RAILWAY COMPANY and others.

At a Special Term of this Court, held at Chambers, December 21st, 1875.

Present—Hon. CHARLES DONOHUE, *Justice.*

On reading and filing the affidavit of D. B. Eaton, and on motion of on behalf of The Farmers' Loan and Trust Company; and after hearing Henry A. Tailer, attorney for J. C. B. Davis, and Mr. Eaton in person, and W. W. MacFarland, as counsel for the Receiver Jewett, and Mr. Larocque for the Erie Railway Company,

It is Ordered, That James C. Spencer, as Referee in the aforesaid foreclosure suits against The Erie Railway Company and others, in one of which J. C. B. Davis, as Trustee, is plaintiff, and in the other of which The Farmers' Loan and Trust Company, as Trustee, is plaintiff, do examine into the facts affecting, and report to this Court the form of a suitable order to be entered concerning the accounts and doings of H. J. Jewett, the Receiver in the first above entitled suit, so far as he has not already examined or reported upon the same in his examinations in the said foreclosure suits. That such order be in such form as to cover the question of the final accounting and discharge of the Receiver and the release of his bondsmen in the first above entitled suit, it being understood that the same is about to be discontinued.

It is further Ordered, That said Referee examine as to, and separately report what costs and allowances are to be paid by the Receiver, if any, and also what disbursements, compensation and expenses will be reasonable to be taxed or allowed to each of the defendants, as Trustees or otherwise, who have appeared in the first above entitled action, and also the charge of the Referee for services under this order.

(A copy.)

WM. WALSH, *Clerk.*

No. 33.

At a Special Term of the Supreme Court of the State of New York, held at the Court-House in the City of New York on the 8th day of July, A. D. 1878.

Present—Hon. CHARLES DANIELS, *Justice*

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,
agst.
THE ERIE RAILWAY COMPANY, *et al.*,
Defendants.

THE FARMERS' LOAN AND TRUST CO., Trustee, &c.,
Plaintiff,
agst.
THE ERIE RAILWAY COMPANY, and JAMES BROWN and J. C. BANCROFT DAVIS, as Trustees,
Defendants.

J. C. BANCROFT DAVIS, Trustee, &c.,
Plaintiff,
agst.
THE ERIE RAILWAY COMPANY, THE FARMERS' LOAN & TRUST COMPANY, Trustees, and James Brown, Trustee, &c.,
Defendants.

On reading and filing the petition of Hugh J. Jewett, Receiver in the foregoing entitled actions, verified on the 2nd day of July instant, and on motion of William W. MacFarland, attorney for said petitioner, all the parties consenting.

It is hereby ordered, that the Clerk of this Court is hereby authorized and directed to deliver into the custody of J. C. Spencer, Referee of this Court, in the above-entitled actions, all the accounts of the said Hugh J. Jewett, Receiver, and all proofs relating to the same, that have been heretofore examined and passed upon by said Referee, and reported upon to this Court, by said Referee, in the two last of the above-entitled actions, and which are now on file in the office of said Clerk.

And it is *further ordered* that James C. Spencer, the said Referee, is hereby authorized to take the custody and safely keep the said accounts and proofs, allowing the said Receiver and his counsel, the Attorney-General for the plaintiff and his associate counsel, and the attorneys and counsel for other parties in the first above-entitled action, to examine and use the same before him as Referee in the accounting of said Receiver provided for in the order of this Court entered in said first above entitled action, May 20, 1878. And the said Referee is also authorized to mark said accounts and proofs for identification in the last-named accounting, so that he can intelligibly refer to the same as exhibits in his report to this Court, of said last named accountings, and after the said accounting has been concluded the said Referee shall return said accounts and proofs to the custody of the Clerk of this Court, who shall endorse and file the same, or such portion of the same, in the first of the above entitled actions, that shall appear to have been marked as exhibits by said Referee in said last-named accounting.

And such of said accounts and proofs, as are so marked as exhibits by the Referee, in said last named accounting, and so filed by the Clerk shall be deemed to be exhibits in the said accounting in the first of the above-entitled actions, as if they were originally made and filed in this Court in the said first of the above-entitled actions. (A copy.)

HENRY A. GUMBLETON.

No. 34.

Copies of leases and contracts, for the use, occupation, and management of railroads and other property, by the Erie Railway Company, introduced in evidence under, and specifically described in, Exhibits Nos. 30 and 31, preceding page 57 of Appendix.

(Transmitted to Court with Report.)

"EXHIBIT M."

Schedule of property claimed by the Attorney-General before the Referee as having been acquired, held, or disposed of by Hugh J. Jewett, Receiver, and not covered by or subject to the mortgage to the Farmers' Loan and Trust Company, now foreclosed, and not subject to any rights or equities of said Trust Company, the purchasers at the foreclosure sale, or their assigns; which claim of said Attorney-General is denied by the respective attorneys and counsel for the Trust Company and the Erie Company.

I.

Real Estate and other property held in fee, or as leasehold, and acquired by the Erie Railway Company before the execution and delivery of the mortgage in question, namely, March 15, 1874.

A.—*Real Estate in the City of New York:*

1. The premises conveyed to the Erie Railway Company by Gould and Fisk, lying between 23d and 24th Streets and Eighth and Ninth Avenues, which includes all the premises known as "The Grand Opera House property," a full description of the same appearing upon Exhibits Nos. 8 and 11, and upon a map introduced in evidence and marked Schedule A of "Exhibit 11," portions of which are held as leasehold, and other portions held in fee.

2. Twelve lots in 16th Ward, New York City, between 22d and 23d Streets and Eleventh and Thirteenth Avenues, being Nos. 834 to 842, and 864 to 866 inclusive, and leasehold property.
3. Eight lots on 23d Street, between Tenth and Eleventh Avenues, New York City, being Nos. 870 to 877 inclusive, and leasehold property.
4. Two lots on 24th Street, between Tenth and Eleventh Avenues, New York City, being Nos. 896 and 897, and leasehold property.
5. Block of ground in New York City bounded by West, Washington, Duane and Reade Streets, about 270 by 70 feet, covered by buildings and used for the general offices of the Erie Railway Company, except a small portion rented for stores, and the same being leasehold property, from the City of New York.

B.—*Real Estate in the States of New York and Pennsylvania not enumerated above, and excepting also what is known as the coal lands, in the State of Pennsylvania:*

1. All the timber and the right to cut the same on 449 acres, adjoining track of Erie Railway, two miles east of Narrowsburgh, and upon 95.48 acres on both sides of said track at Summit.
2. Gravel pit of 10.67 acres, adjoining both sides of said track, east of East Branch of Delaware River, in or near Hancock.
3. Triangular piece of land, of 3.28 acres, near junction of Northern Central Railroad, in the town of Horseheads.
4. Triangular piece of land, of 6.75 acres, adjoining Corning Bridge.
5. Two acres of land, adjoining said track and opposite Warsaw Station.
6. Gravel pit, of 1.01 acres, in Attica, N. Y.
   " " 1.03 " Alexander, "
   " " 3.02 " " "
7. 3.26 acres adjoining track at Forestville Station.
   1.51 " " " "
   4.75 " " " "
8. Block of land, in City of Buffalo, bounded by Babcock, Clinton and William Streets, and Williamsville Road, and lot on Exchange Street, and 26.78 acres on Farmer's Point.
9. A lot on Erie and 4th Streets, and a lot on Quay and 9th Streets, in the village of Niagara Falls, N. Y.
10. Three lots on the Portage Road, in the village of Suspension Bridge, one of .90 acres, another of 3.80 acres, and another of 3.64 acres.
11. Four acres of land, being depot grounds at Honesdale, Pa.
12. Lands known as the Whittmore property, or Erie Colliery, at Carbondale, Pa.

C.—*Real Estate in the State of New Jersey, being lands on the line of the Paterson, Newark and New York Railroad, and on the line of the Newark and Hudson Railroad, and on the Weehawken Branch connection, the Pen Horn Creek lands, the Laundry property at the west end of Bergen Tunnel, the Petroleum Depot lands at Weehawken, and a lot in Hackensack of about one-half acre on the southerly side of Paterson and Hudson Turnpike; all of which are more particularly set forth and described in a schedule in evidence marked "Exhibit No. 7."*

D.—*Railroads and other property of corporations held under lease or contract, and fully described in a schedule received in evidence June* 11, 1879, *and marked "Exhibit No.* 31," *excepting therefrom the following leases which are set forth and described in the said mortgage:*

The Union Railroad Company.
The Buffalo, New York and Erie Railroad Company.
The Buffalo, Bradford and Pittsburgh Railroad Company.
The Rochester and Genesee Valley Railroad Company.
The Long Dock Company.

II.

***Real Estate and other property held in fee or as leasehold, and acquired by the Erie Railway Company, or the Receiver thereof, after the execution and delivery of the mortgage in question, namely, March 15th,* 1874.**

A.—*Real estate in the City of New York:*

1. Twenty-one lots between 22d and 23d Streets and 11th and 13th Avenues, being Nos. 843 to 863, inclusive, together with wharf and bulkhead in front of lots.
2. Lot No. 331 West 23d Street, being part of Opera House property, which was sold under mortgage and foreclosure sale. The equity of redemption of this property was owned by the Erie Railway Company, previous to March 15, 1874. The Receiver purchased the same at the mortgage sale for $15,200.
3. Three lots on 24th Street, between 10th and 11th Avenues, being Nos. 542, 544 and 546, leased by Matthew Kane to the Erie Railway Company May 1st, 1876, and occupied by the Receiver as stables for the Erie Baggage Express. This lease was a renewal of a former lease of the same property.

B.—*Real Estate in the States of New York, New Jersey and Pennsylvania (lands in New York City and the Pennsylvania coal lands not included), being the same lands described in a schedule received in evidence, and marked Exhibit No.* 19.

III.

Capital stocks of corporations, bonds and other securities that were owned by the Erie Railway Company, and came into the possession of the Receiver, May* 26, 1875, *or that were thereafter acquired by him as such Receiver.

A.—*Capital stocks and bonds of coal corporations, date of acquirement, and par and estimated values thereof:*

1. Capital stock of the Hillside Coal and Iron Company acquired in 1873, par value $999,300, no estimated value.

2. Capital stock of the North-Western Mining & Exchange Company, acquired in 1873, par value $493,000, no estimated value.
3. Capital stock of the Towanda Coal Company, acquired in 1868, par value $450,000, and second mortgage bonds of same company, acquired from 1869 to 1873, par value $244,000. No estimated value.
4. Capital stock of the Glenwood Coal Company, acquired in 1873, par value $987,800; also,
   First mortgage bonds of same company, acquired 1870 to 1873, par value $499,000; also,
   Second mortgage bonds same company, acquired 1873, par value $499,000; also,
   Unpaid interest coupons of 1872, same company, acquired in 1873, par value $12,285; also,
   First mortgage bond, $1,000; and
   Second mortgage bond, $1,000, same company, acquired by Receiver in 1876. All of the above estimated as valueless.
5. Capital stock of the Lackawanna and Susquehanna Coal and Iron Company, acquired in 1873, par value $40,000, estimated as valueless.
6. Capital stock of the Keystone Coal and Transportation Company, par value $495,000. (This was acquired by the Erie Company in 1873, and was one of the companies consolidated into the Hillside Coal and Iron Company, according to the testimony, and was extinguished thereby.)

B.—*Capital stock and bonds of railroad corporations, date of acquirement, and par and estimate values thereof.*

1. Capital stock of Suspension Bridge and Erie Junction Railroad Company, acquired in 1870 and 1873, par value $144,500 and $30,800, acquired in 1874.
   $50,000 par value same stock obtained by the Receiver in final settlement of restitution by Jay Gould, February, 1876.
   $245,000 par value of same stock acquired by the Receiver by purchase in 1876, 1877 and 1878. No estimated value on above.
   Bonds of same company, acquired in 1870 to 1871, par value $35,000, estimated $17,500.
2. Capital stock Nyack and Northern Railroad Company, acquired in 1873, par value $16,100, no estimated value.
   Bonds of same company acquired in 1873, par value $3,000, estimated value $1,800 (being amount received on sale of same by Receiver, August, 1876.)
3. Capital stock of the Northern Railroad of New Jersey, acquired 1873, par value $900, estimated value $495 (being amount for which the Receiver sold the same, December, 1875.)
4. Capital stock of the Jefferson Railroad Company, acquired 1870 to 1873, par value $2,044,800, no estimated value.
   Bonds of same company, acquired in 1870, par value $714,000, estimated value $571,200.
5. Capital stock of the Hoboken and Jersey City Horse Car Railroad Company, acquired in 1869, par value $6,000, estimated value $2,400 (being amount for which Receiver sold the same July, 1876).
6. Capital stock Pavonia Horse Railroad Company, $34,000 par value, acquired prior to March 15, 1874, $10,000, par value, acquired July, 1874, no estimated value.
   Bonds of same company, $41,000, par value, acquired before March 15, 1874; and $50,500 par value in 1874, subsequent thereto; same bonds acquired by Receiver, 1875, par value $1,000. No estimated value on above.
7. Capital stock Monticello & Port Jervis Railroad, acquired prior to 1873, par value $10,000, no estimated value.

8. Preferred capital stock of Erie Railway Company, acquired prior to 1873, par value $7,475, estimated value $2,223.

Common stock of same company, acquired November, 1874, par value $200, estimated value $25.

Dividend certificates, same company, acquired 1873, par value $39,549, no estimated value.

9. Capital stock of the Walkill Valley Railroad, acquired prior to 1873, par value $19,900, no estimated value.

10. Capital stock of the Buffalo, New York & Erie Railroad Company, acquired 1873 to 1874, par value $575,900, estimated value $575,900.

Bonds of same company acquired in 1874, par value $49,000 ; $255,000, par value, acquired by the Receiver by purchase in 1876. (In March, 1877, the Receiver sold all of the above bonds for $250,800, which was their actual value at that time.)

11. Capital stock of the Southern Central Railroad Company, acquired in 1873, par value $89,900, no estimated value.

12. Capital stock of the Buffalo, Bradford and Pittsburg Railroad Company, acquired in 1867 and 1868, par value $2,017,700, no estimated value.

Bonds of same company acquired prior to 1873, par value $185,000, estimated value $92,500.

13. Capital stock of the Paterson, Newark and New York Railroad Company, acquired prior to 1873, par value $250,000, no estimated value.

14. Capital stock of New York and New England Railroad Company, acquired May 9, 1874, par value $100,000, estimated value $12,000.

15. Capital stock of the Newark and Hudson Railroad Company, acquired during 1872, par value $249,800, no estimated value.

Bonds of same company, acquired during 1872, par value $250,000, estimated value $125,000.

16. Capital stock of the Erie International Railway Company, acquired 1873 to 1874, par value $50,000, no estimated value.

17. Capital stock of the Montclair and Greenwood Lake Railway Company, acquired April, 1877, in exchange for same amount of bonds of same company, par value $100,000, no estimated value.

18. Capital stock of the Bergen County Railway Company, acquired in 1878, by Receiver, in settlement of advances theretofore made by Erie Company, par value $3,000, no estimated value.

19. Bonds of the Lamont Mining and Railroad Company, acquired 1870, par value $30,000, no estimated value.

20. Bonds of Boston, Hartford and Erie Railroad Company, guaranteed by Erie Company, acquired in 1868, par value $629,000, estimated value $75,480.

21. Bonds of Paterson and Newark Railway Company, acquired in 1873, par value $235,500, estimated value $117,750.

Bonds of same company, acquired by Receiver by purchase, 1877 and 1878, par value $249,000, estimated value $124,500.

22. Bonds of the Newburgh and New York Railroad Company, acquired in 1870, par value $166,000, estimated value $83,000.

23. Bonds of New Jersey and New York Railway Company, acquired in 1875, par value $34,000, estimated value $850.

24. Second mortgage bonds of the Northern Central Railway Company, acquired by the Receiver March, 1876, in exchange for income bonds of same company that were received from Jay Gould on restitution account, par value $350,000, estimated value $140,000.

C.—*Stocks and bonds of corporations other than coal and railroad companies, date of acquirement, and par and estimated values thereof.*

1. Capital stock of the Jefferson Car Company, acquired in 1873 and to March 15, 1874, par value $173,400; acquired in April, 1875, par value $100,000, no estimated value on above, the same having been delivered up to said company by the Receiver in payment of judgment against Erie Company, July, 1875.
2. Capital stock of the Pennsylvania Transport Company, acquired in 1873, par value $450,000, estimated as valueless.
3. Capital stock of the Brooks Locomotive Works, acquired in 1873, par value $198,000, no estimated value, delivered by Receiver to said company in June, 1876, in payment of obligation of Erie Company.
4. Capital stock of the Compressed Air Safety Brake Company, acquired in 1873, par value $30,500, no estimated value.
5. Capital stock of the Erie and Altantic Sleeping Coach Company, acquired in 1870 and 1872, par and estimated value, $153,800.
6. Capital stock of the Harbor Wrecking Company, acquired in 1869, par value $2,000, no estimated value.
7. Capital stock of the Union Steamboat Company, acquired in 1874 before March 15, par value $762,800; acquired in 1874 and 1875, $106,200; acquired by Receiver, $125,000; total par value $994,000, estimated at par.
8. Capital stock of the Union Dry Dock Company, acquired in 1870, par value $75,000, estimated value $75,000.
9. Preferred stock of the Reno Company, acquired in 1870, par value $5,123, no estimated value.
10. Capital stock of the International Bridge Company, acquired prior to 1873, par value $4,140, sold for par by Receiver in November, 1876.
11. Capital stock Long Dock Company, acquired prior to 1873, par value $800,000, no estimated value.

    Bonds of same company, acquired in 1873, par value $11,000, estimated value $11,500 (being amount for which Receiver sold same in 1876).
12. Capital stock National Stock Yard Company, acquired prior to March 15, 1874, par value $232,200, acquired by Receiver by purchase $549,500, no estimated value.

    Bonds of same company, acquired in 1870 to 1872, par value $655,000; acquired by Receiver in 1876, par value $10,000; total estimated value of bonds $332,500.
13. Bonds of New York and Boston Express Company, acquired in 1870, par value $170,000, estimated as valueless.
14. Bonds of Mariposa Company, acquired in 1870, par value $1000, no estimated value.
15. Bonds New York and Pennsylvania Blue Stone Company, acquired in 1873, par value $15,000, estimated as valueless.
16. Capital stock of the United States Express Company, acquired by the Receiver February, 1877, in accordance with contract, par value $500,000, estimated value $240,000.
17. Capital stock of the Union Car Company, acquired February, 1875, par value $330,500, no estimated value. (This stock represents rolling stock in use by Erie Company under Receivership.)
18. Capital stock of the United States Tow-Boat Company, acquired in 1873, par value $7,500, estimated value $1,583.57 (being amount received by Receiver for same in July, 1875).
19. Capital stock of the Pavonia Ferry Company, stated as 990 shares, time of acquirement or values not stated. (No testimony in regard to this property, or its character, that the Referee can remember or find.)

D.—*Securities held as collateral or in trust by the Erie Railway Company prior to the Receivership, and since then by the Receiver, and now in his possession:*

1. Capital stock of Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company, acquired after August, 1874, and prior to May 26, 1875, par value $1,424,300.
2. Capital stock of the New York and New Jersey Provision Dealers' Association, acquired in December, 1874, par value $20,000.
3. Interest coupons of the Atlantic and Great Western Railroad Company:

1st Mortg. Ohio Div.	Currency coupons,	$ 76,951
2d " " "	Gold "	83,860
	Total par value,	$160,811

Extension certificates of same company, 1,318 of £100 each; total par value $656,500; acquired during 1874.

4. Capital stock of the Avon, Geneseo and Mount Morris Railroad Company, acquired prior to 1873, par value $30,750.
5. Capital stock of the Rochester and Genesee Valley Railroad Company, acquired prior to 1873, par value $149,400. (No value estimated upon the above securities held as collateral or in trust.)

E.—*Divers accounts on the books of the Erie Railway Company against individuals and corporations, the following being particularly specified by the Attorney-General:*

J. McHenry	$2,190,354 29
London Banking Association	1,141,951 95
Claims in Suspense Account	1,542,251 95
Atlantic and Great Western Railroad Company	595,718 72
Hillside Coal and Iron Company	1,432,226 73
Northwestern Mining and Exchange Company	398,247 44
Towanda Coal Company	50,155 88
Delaware and Hudson Canal Company	28,206 41
Erie International Railway Company	213,964 19
Suspension Bridge and Erie Junction Railroad Company	302,740 80

F.—*All the accounts standing on the Receiver's books May* 31, 1878, *against divers individuals and companies, and to his credit as Receiver; and all the moneys due or to become due therefor, or received therefrom.* (*None of these accounts specified by the Attorney-General.*)

G.—*Executory contracts between the Erie Railway Company or the Receiver with individuals and corporations.* (*No specifications by Attorney-General.*)

H.—*Patent Rights owned by the Erie Railway Company and specified by the Attorney-General, as follows:*

Turner's Patent for ventilating railroad cars;
Turner's Patent for car trucks;
Patent for tempering springs;
License for using patent brake;
Patent for car coupler and buffer;
" " locomotive safety trucks;
Adams' Patent for cleaning cotton waste;
Patent for smoke stack.

K.—*Amount of cash received by Receiver from the Erie Railway Company, May* 26, 1875—*June* 15, 1875, *stated by Attorney-General to be the sum of* $561,096.59. *Also amount of cash in the hands of the Receiver, May* 31, 1878, *stated by the Attorney-General to be the sum of* $346,021.51.

L.—*All rents and moneys received by Receiver on property since June* 1, 1878. (*No specifications by the Attorney-General.*)

SUPPLEMENTARY APPENDIX.

"EXHIBIT N."

Copies of Stipulations of parties made herein after the reopening of the Reference, July 31st, 1879.

Also Exhibits received in evidence after said date.

August 6, 1879.

All parties stipulated in open Court and directed the Clerk to enter upon the minutes as follows:

"The stipulation entered into herein, June 14, 1878, is hereby amended to read as follows: That all "the orders made and entered in the Supreme Court in this action of The Farmers' Loan Trust Co. *v.* "The Erie Railway Co. *et al.*, and the action of J. C. B. Davis *agst.*. The Erie Railway Co. *et al.*, and "also all petitions, affidavits, and reports of Referees, and other papers upon which said orders were "based, and the pleadings and other papers in said actions, be considered as evidence or proofs in this "reference, so that either party may refer to or read any of the same before the Referee or before the "Court."

All parties stipulated in open Court and directed the Clerk to enter upon the minutes as follows:

"That the mortgage of The Erie Railway Company to The Farmers' Loan and Trust Company, "February 4, 1874, was delivered on or about March 15, 1874."

August 7, 1879.

All parties stipulated in open Court and directed the Clerk to enter upon the minutes as follows:

"That the Referee report the testimony taken at this and the last preceding session as the same "is written out by the stenographer."

All parties stipulated in open Court and directed the Clerk to enter upon the minutes as follows:

"That either party may, within ten days, file certified copies of any conveyances of property now "held by H. J. Jewett, Receiver, not already in evidence. It was also agreed that counsel for the "plaintiff may, within said time, cause to be filed a statement of trial balance of The Erie Railway "Company, May 31st, 1875."

August 12, 1879.

The following stipulation was this day filed with the Referee:

(*Title of Action.*)

"It is hereby stipulated and agreed that counsel for plaintiff have ten days' additional time within "which they are to furnish copies of deeds, &c., to the Referee herein.

"Dated N. Y., August 12, 1879."

"TURNER, LEE, & McCLURE,
Attys. Deft. F. L. & T. Co.
"SHIPMAN, BARLOW, LAROCQUE, & MACFARLAND,
"35 William Street,
"*N. Y. City.*"

No. 1.

(*Cited in testimony as "Exhibit No. 1," Aug. 6, 1879.*)

Map of Erie Railway and branches, including leased lines.

(Transmitted with Report, original Exhibits, &c., to Court.)

No. 2.

Mortgage Long Dock Co. to Erie Railway Co. *et al.*, May 25, 1863.

(Transmitted as above.)

No. 3.

Mortgage Long Dock Co. to Erie Railway Co. *et al.*, August 15, 1857.

(Transmitted as above.)

No. 4.

Memorandum of agreement between Erie Railway Co. and National Stock Yard Co., February 1, 1870.

(Transmitted as above.)

No. 5.

Deed Peter H. Watson and Rebecca R. Watson to Hugh J. Jewett, July 27, 1874.

(Transmitted as above.)

No. 6.

Assignment lease Lucy D. Fisk to Peter H. Watson, December 18, 1872.

(Transmitted as above.)

No. 7.

Deed Thomas Boese, Referee, to Hugh J. Jewett, October 31, 1876.

(Transmitted as above.)

No. 8.

Deed Thomas Boese, Referee, to Hugh J. Jewett, October 31, 1876.

(Transmitted as above.)

No. 9.

Deed Wheeler H. Peckham, Referee, to The Erie Railway Co., August 6, 1875.

(Transmitted as above.)

No. 10.

Deed John P. O'Neal, Referee, to Hugh J. Jewett, October 23, 1875.

(Transmitted as above.)

No. 11.

Deed Charles H. Knox, Referee, to Hugh J. Jewett, August 21, 1875.

(Transmitted as above.)

No. 12.

Statement cash balance Erie Railway Co., May 31, 1875.

(Transmitted as above.)

INDEX TO APPENDIX,

AND TO

DOCUMENTARY EVIDENCE.

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* NOTE.—The various Schedules and Statements attached to and forming part of other papers, *e.g.*, Judgments, Reports, &c., are not indexed here.

N. Y. Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK, *against* THE ERIE RAILWAY COMPANY AND THE FARMERS' LOAN AND TRUST COMPANY.	*Findings.*

This cause having been heard by the undersigned, one of the Justices of the Supreme Court, without a jury, at a Special Term of said Court, held at the Court House, in the City and County of New York, on the 21st day of November, 1879, upon the pleadings, and upon the two reports of the Hon. James C. Spencer, Referee, bearing date respectively the 31st day of October, 1879, and the 20th day of November, 1879, and upon the testimony taken before the said Referee, and annexed to the said reports respectively, and upon the exhibits respectively thereto attached, and upon all the proceedings had in the action; and counsel for the respective parties having been heard; after due consideration of the said pleadings, proofs, reports, and arguments, I do find the following facts as established in this cause:

First.—That the Receiver in this action did not at any time acquire, hold, or dispose of any property of any kind not covered by or subject to the lien of the mortgage of the said defendant, The Erie Railway Company, to said defendant, The Farmers' Loan and Trust Company, which mortgage has been foreclosed, as fully and at large set forth in the said reports of the said Referee.

Second.—That the judgment of foreclosure in the action of the said

Farmers' Loan and Trust Company against the said Erie Railway Company, made and rendered upon the mortgage above mentioned, as fully and at large set forth in the said reports of the said Referee, and the sale under the said judgment, and the conveyances made by the Referee in pursuance of such sale, the conveyance and assignments subsequently made to the purchasers at such sale, and by such purchasers to the New York, Lake Erie and Western Railroad Company, did vest in the said New York, Lake Erie and Western Railroad Company a good and valid title to all the property of every kind and description embraced and described in the said judgment, and in the said several conveyances and assignments.

Third.—That the defendant, the Erie Railway Company, at the date of the appointment of the Receiver in this action, on the 26th day of May, 1875, was and had been wholly insolvent for more than a year then last past, as alleged in the complaint in this action; that the said company has continued to be wholly insolvent, and has during all the time since the appointment of the said Receiver, by reason thereof, been unable to carry on its business, or exercise or employ its franchises, as contemplated and required by the laws under which said company was created, and by the statutes of this State prescribing the functions and duties of railroad companies, and by reason of the aforesaid judgment of foreclosure and the said sale, the said Erie Railway Company has been wholly and permanently deprived of every right and franchise, and of every kind and character of property necessary to enable it to carry on the business, and to exercise and employ its franchises as contemplated and required by the laws under which said company was created, and by the Statutes of this State describing the functions and duties of railroad corporations.

And as my conclusions of law from the foregoing facts, I do find and decide that the plaintiffs are entitled to judgment, and that judgment be entered in this cause, dissolving the Erie Railway Company, in conformity with the statutes in such case made and provided.

Dated New York, November 25, 1879.

CHAS. DONOHUE,
J. S. C.

At a Special Term of the Supreme Court, held at the Court-house, in the City and County of New York, on the 25th day of November, A. D. 1879.

Present—Hon. CHARLES DONOHUE, *Justice.*

THE PEOPLE OF THE STATE OF NEW YORK

against

THE ERIE RAILWAY COMPANY AND THE FARMERS' LOAN & TRUST COMPANY.

Judgment.

An order having been made in this action, on the 20th day of May, 1878, referring it to the Hon. James C. Spencer, as Referee, among other things to examine, adjust and pass upon all the accounts, acts and doings of Hugh J. Jewett, Receiver in this action, for and during the entire period of his said receivership; also to take testimony for the purpose of ascertaining what property or assets, if any, the said Hugh J. Jewett, as Receiver in this action, acquired, held or disposed of, not covered by or subject to the lien of the mortgage of the Erie Railway Company to the Farmers' Loan & Trust Company, which had been foreclosed, and if any such property had been disposed of by said Receiver, what disposition had been made thereof; and also what rights and equities, if any, the said Farmers' Loan & Trust Company, the purchasers at the foreclosure sale of the mortgaged premises, or their assigns, had in or to such property or assets, or any portion thereof, and to report to this Court the testimony so taken by him, and the material facts which he might deem established by such testimony, with his opinion thereon; also to take proof of the facts and circumstances stated in the pleadings in this cause, and report the same, with his opinion thereon. And the said Referee having on the

2d day of December, 1878, made a report as to the accounts, vouchers, acts and doings of the said Hugh J. Jewett, as Receiver, covering the whole period from the 26th of May, 1875, to the 31st of May, 1878, both dates inclusive. And this Court, by an order bearing date the 16th day of December, 1878, after hearing all the parties, having duly confirmed the said report of the said Referee, and duly approved and confirmed all the accounts, vouchers, acts and doings of the said Hugh J. Jewett, as Receiver, during the said period.

And the said action having been brought to a hearing at a Special Term of this Court, held at the Court-house in the City and County of New York, on the 21st day of November, A. D. 1879, before the Hon. Charles Donohue, one of the Justices of the said Court, without a jury; and having been then and there fully heard and tried upon the pleadings, and upon two further reports made by the said James C. Spencer, Referee, which reports bear date respectively the 31st day of October, 1879, and the 20th day of November, 1879, and upon the testimony and exhibits attached to said reports respectively; and the said Justice, after having duly considered the proofs and allegations of the said parties, having made and filed his decision in writing, bearing date the 25th day of November, 1879.

Now, after hearing Mr. A. J. Parker and Mr. L. F. Cozans, on behalf of Hon. Augustus Schoonmaker, Attorney-General of the State of New York, on the part of the plaintiffs, and Mr. William W. MacFarland and Mr. George F. Comstock, on behalf of the defendants, it is hereby

ORDERED, ADJUDGED AND DECREED, and this Court, by virtue of the power and authority therein vested, doth hereby order, adjudge and decree:

1. That the said hereinbefore mentioned reports of the said James C. Spencer, Referee, be and the same are, each and every of them, in all things confirmed.

2. That the Receiver in this action did not at any time acquire, hold, or dispose of any property of any kind not covered by or subject to the lien of the mortgage of the said defendant, The Erie Railway Company, to the said defendant, The Farmers' Loan & Trust Company, which mortgage has been foreclosed, as fully and at large set forth in the said reports of the said Referee.

3. That the judgment of foreclosure in the action of the said Farmers' Loan & Trust Company against the said Erie Railway Company, made and rendered upon the mortgage above mentioned, as fully and at large set forth in the said reports of the said Referee, and the sale under the said judgment, and the conveyance made by the Referee in pursuance of such sale, the conveyances and assignments subsequently made to the purchasers at such sale, and by such purchasers to The New York, Lake Erie & Western Railroad Company, did vest in the said New York, Lake Erie & Western Railroad Company a good and valid title to all the property of every kind and description embraced and described in the said judgment, and in the said several conveyances and assignments.

4. That the defendant, the Erie Railway Company, at the date of the appointment of the Receiver in this action, on the 26th of May, 1875, and of the commencement of this action, was and had been wholly insolvent for more than a year then last past, as alleged in the complaint in this action; that the said company has continued to be wholly insolvent, and has, during all the time since the appointment of the said Receiver, by reason thereof, been unable to carry on its business, or exercise or employ its franchises, as contemplated and required by the laws under which the said company was created, and by the statutes of this State prescribing the functions and duties of railroad companies; and by reason of the aforesaid judgment of foreclosure and the said sale, the said Erie Railway Company has been wholly and permanently deprived of every right and franchise, and of every kind and character of property necessary to enable

it to carry on the business, and to exercise and employ its franchises as contemplated and required by the laws under which said company was created, and by the statutes of this State describing the functions and duties of railroad corporations.

5. That the said defendant corporation, the Erie Railway Company, be and the same is hereby adjudged to be dissolved.

6. That whereas Hugh J. Jewett was, heretofore, by an order of this Court, duly appointed Receiver in this cause, and duly qualified as such Receiver:

It is further ordered, adjudged, and decreed, that the said Hugh J. Jewett be and he is hereby continued as Receiver of the Erie Railway Company, with all the power and authority conferred by law upon Receivers of dissolved corporations in like cases.

It is further ordered, adjudged, and decreed, that the costs, expenses, and extra allowances of the several parties to this action are properly chargeable, and are hereby charged, upon the fund which was the subject of investigation under the order of reference of May 20, 1878, and upon the proceeds thereof, and it appearing that the amount thereof has been fixed by stipulation between the parties at a sum not to exceed one hundred and eighteen thousand one hundred dollars, and that the due apportionment thereof has also been fixed by stipulation, no further judgment or direction on that subject is required, or will be given by the Court.

(A copy.)

[L. S.] HUBERT O. THOMPSON,
Clerk.

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